

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Port of Spain**

**Claim No. CV 2015-02781**

**BETWEEN**

**CALVIN LAVENDE**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Madame Justice Margaret Y Mohammed**

**Date of delivery: April 29, 2019**

**APPEARANCES:**

Mr. Matthew Gayle instructed by Ms. Sheriza N Khan Attorneys at law for the Claimant.

Ms. Kelisha Bello instructed by Ms. Lianne Thomas Attorneys at law for the Defendant.

## JUDGMENT

1. Gaspar Grande is an Island (“the Island”) situated off the north-western peninsula of Trinidad. In August 2011 the then Government declared a State of Emergency in Trinidad and Tobago. The **Emergency Powers Regulations 2011** (“the EPR”), bestowed on the members of the Defence Force certain powers to enter and search premises without a search warrant. This matter concerns an incident involving the Claimant and members of the Defence Force i.e. the soldiers (“the soldiers”) and the coast guard officers (“the coast guard officers”) in the exercise of those powers during the State of Emergency.
2. It was not in dispute that the coast guard officers and the soldiers performed a joint exercise in the search for illegal narcotics, firearms and other illegal items on premises situated at Savoury’s Bay on the Island (“the premises”) during the State of Emergency pursuant to the EPR; that the Claimant was detained in conducting the search and the Claimant was taken to the Port of Spain General Hospital for medical treatment.
3. The Claimant contends that while he was the lawful occupant of the premises he was wrongfully detained, assaulted and beaten by the soldiers, which caused him to seek medical treatment. Following the Claimant’s discharge from the hospital, upon returning to the premises the Claimant realised that a pair of binoculars, a phone card valued at \$60.00 and a sum of \$600.00 were missing.
4. The Claimant has brought this action against the Defendant seeking:
  - a) Damages including special damages, aggravated and/or exemplary damages for false imprisonment, assault and battery

and/or personal injury arising out of the assault and battery, post-traumatic stress disorder and/or psychic harm.

- b) A declaration that the arrest and/or detention of the Claimant was unconstitutional and illegal.
  - c) A declaration that the refusal and/or omission of the soldiers and the coast guard officers to inform the Claimant upon his arrest and/or detention of his rights to retain and/or instruct without delay a Legal Advisor of his choice and to hold communication with him was unconstitutional and illegal.
  - d) Apart from (a) above monetary compensation for the relief and/or reliefs sought in paragraph (b) and/or (c) above.
  - e) Interest pursuant to section 25 **Supreme Court of Judicature Act**.
  - f) Costs.
  - g) Any further and/or relief that the Court may deem just.
5. The Defendant was sued pursuant to the provisions of the **State Liability and Proceedings Act**<sup>1</sup> in its capacity as the legal representative of the State as the employer of the soldiers and the coast guard officers.

#### **THE CLAIMANT'S CASE**

6. The Claimant's case is that on the 30 August 2011 he and some friends and family who included Ryan Henry who is also known as Ryan Hacket ("Ryan"), Sujesh McIntosh and Allister were on the premises. He saw three boats with the coast guard officers approaching the bay. Upon entering, he opened the door of the premises and saw the soldiers and coast guard officers. They then entered to conduct a raid for 'guns and drugs' without producing a search warrant. They then placed everyone in the gallery of

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<sup>1</sup> Chapter 8:02

the house and searched the two houses on the premises and they found no illegal items.

7. On the 1 September 2011, the soldiers and the coast guard officers returned to the premises. Coast guard officers attempted to open the door with a bolt cutter while everyone was asleep. The Claimant informed the coast guard officers that he had a key to open the door. He was directed by the coast guard officers to open the door and he was ordered to lie flat on his face with his hands behind his head. Thereafter, the coast guard officers stormed the house and the rest of the occupants were taken downstairs to sit outside the gallery. After the coast guard officers had contained the house a small boat which was close to the premises shuttled the soldiers unto the Island from a larger vessel.
8. Thereafter, the Claimant and other occupants were taken down to the shore of the beach by the coast guard officers. Ryan was ordered to return to the house and he was then escorted upstairs. The Claimant heard Ryan bawling and being beaten.
9. The Claimant was then escorted upstairs at gunpoint by the coast guard officers. He observed Ryan kneeling down on the ground with his head facing downwards, crying with one dreadlock remaining in his head. One of the soldiers then approached the Claimant and asked "where the drugs and guns?" The Claimant replied that he did not smoke and he did not have any guns. The Claimant was then made to kneel down with his hands clasped behind his head when a soldier again asked him "where the drugs and guns?" The soldier then hit the Claimant twice on the left side of his temple with a gun butt. He was then hit four times with a piece of iron; he received one blow across his neck; one across his spine; and two across his back.

10. The Claimant remained in the same position that he was in when seven soldiers surrounded him. He then felt a gun butt to the left side of his upper body and just underneath his heart, which was inflicted with a "Galil" Machine Gun. He fell to the ground while gasping for air as he experienced breathing difficulties. A soldier then stood on top of his head with his whole body weight. He then grounded his boots into the Claimant's right ear, which caused the Claimant to experience total deafness. After sometime, the Claimant got up and returned to the same kneeling position. The soldiers remained silent then all of a sudden, the Claimant felt a blow to the centre of his skull with a piece of iron which was inflicted by the soldiers. This caused blood to start gushing from his head and onto his shoulders.
11. The Claimant and Ryan were taken downstairs by the soldiers and ordered to go into the sea until only their necks were visible. While in the sea the soldiers began pelting them with stones and said, "don't look back". They were then called out of the water and put to sit around the table and beach chairs by the beach. About fifteen minutes after, the Coast Guard's boat then took the Claimant and two other men to the Coast Guard's base and placed them in an ambulance. They were then taken to the Port-of-Spain General Hospital where they were warded and the coast guard officers left.
12. While warded, the Claimant received nine stitches for his injuries. Upon being discharged from the hospital, the Claimant returned to the premises. The Claimant realised that the alcohol which he kept in a drawer was missing along with a pair of binoculars, a phone card valued at \$60.00 together with \$600.00 cash was missing.

13. On the 4 October 2011 the Claimant made a report of the incident at the Carenage Police Station. The Claimant has continued to seek medical attention with respect to the said incident.
  
14. The Claimant pleaded the following particulars of unlawful arrest and/or unlawful detention and false imprisonment:
  - a) The members of the Defence Force i.e. the soldiers and the coast guard officers failed to inform the Claimant of the ground for his arrest and/or detention under the EPR.
  - b) The Claimant was not about to commit an offence nor was he in the act of committing an offence.
  - c) The soldiers and the coast guard officers could not have suspected and did not suspect reasonably or at all, that the Claimant was about to commit an offence or was committing an offence.
  - d) The soldiers and coast guard officers could not have suspected and did not suspect, reasonably or at all, that Claimant was guilty of any offence.
  - e) It was not necessary to arrest and detain the Claimant in order to search the house/premises because the Claimant voluntarily unlocked the door and allowed entry to the soldiers and coast guard officers being the Defendants.
  - f) It was not necessary to arrest and/or detain the Claimant in order to allow the prompt or effective investigation of any offence or the conduct of the Claimant nor was there any prospect that the Claimant might disappear and thereby hinder any eventual investigation or prosecution in that they were on an Island surrounded by water which made it impossible for the Claimant to leave the Island unnoticed by the soldiers and coast guard officers.

## **THE DEFENCE**

15. The Defendant's Defence was that the soldiers and coast guard officers had reasonable and probable cause to detain the Claimant and that any force used during his detention was reasonable.
16. The Defendant's version was that on the 1 September 2011, Captain Anthony Booker ("Capt. Booker"), Corporal Dexter Joseph ("Cpl Joseph") and other soldiers were detailed to engage in a joint operation with the Trinidad and Tobago Coast Guard pursuant to the EPR. The operation included securing the locations of the Island and searching for illegal or specified items at houses and premises on the Island. Coast guard officers from the Special Naval Unit conducted the raid and secured the house. The soldiers conducted the search on the premises and questioned the civilians present. By the time Capt. Booker and other soldiers arrived at the house, the premises were already secured by the coast guard officers.
17. The soldiers entered the premises and began conducting a search of the upstairs portion of the house. They found the house to be in a state of disrepair with apparent water damage and the interior was disoriented and unclean. The Claimant was sitting outside with the other civilians and he was called to be interviewed by Cpl Joseph when he admitted that he occupied a room.
18. The Claimant approached Cpl Joseph and he appeared to be intoxicated, as he smelled of alcohol and swayed when he walked. The Claimant used obscene language when he said, "What de fuck wrong with you? Allyuh eh know where the big drugs is". Cpl Joseph confirmed that the Claimant was the occupant of the room and he indicated to the Claimant that he wanted to search the room in his presence. However, the Claimant behaved in a

hostile manner towards Cpl Joseph and placed his two hands on the door frame of the room which blocked Cpl Joseph's entry, and refused to move.

19. Cpl Joseph, who had a rifle strapped to his chest, placed his right hand on the Claimant's left shoulder and the Claimant turned around and flung his hand in Cpl Joseph's direction. Cpl Joseph engaged the Claimant to defend himself and protect his rifle and both he and the Claimant fell backwards. Cpl Joseph then assisted the Claimant to an upright position and observed that his head was bleeding. He then applied a cloth to the Claimant's head to stem the bleeding and they both proceeded to the downstairs portion of the house where Cpl Joseph immediately reported the incident to Capt. Booker.
20. The Defendant denied that the Claimant was missing some of his personal items as the soldiers and the coast guard officers did not find any illegal items at the house and as a result did not remove any items from the premises. The Defendant also denied that the soldiers and coast guard officers assaulted the Claimant to the extent that he had to seek medical treatment; and that the soldiers placed everyone in the gallery of the house.

#### **THE ISSUES**

21. If the Claimant's version of the events is correct it means that, the Claimant was detained without reasonable and probable cause by the soldiers and the coast guard officers and that during this time he was assaulted and violently beaten to the extent that he had to obtain medical treatment.
22. Conversely, if the Defendant's version is correct then the soldiers and the coast guard officers had reasonable and probable cause to detain the Claimant, and in doing so, they used reasonable force.



23. In the closing submissions on behalf of the Claimant<sup>2</sup> Counsel conceded that the Claimant was detained by the soldiers and coast guard officers to effect a search of the premises and that he was not arrested.
24. For the Claimant to succeed with his action the following issues are to be determined in his favour:
- (a) Was the Claimant falsely imprisoned?
  - (b) Was the Claimant assaulted and beaten?
  - (c) If the Claimant succeeds in proving his claim what is an appropriate award of damages to compensate the Claimant?
25. There are disputes of facts to be resolved in this matter. In such circumstances, the Court has to satisfy itself which version of events is more probable in light of the evidence. To do so, the Court is obliged to check the impression of the evidence of the witnesses on it 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>).
26. The Court of Appeal in **The Attorney General of Trinidad and Tobago v Anino Garcia**<sup>5</sup>, took the position that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.

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<sup>2</sup> Filed 28 February 2019

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

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

<sup>5</sup> Civ. App. No. 86 of 2011 at paragraph 31

### **WAS THE CLAIMANT FALSELY IMPRISONED?**

27. It was common ground that at the time of the incident the soldiers and coast guard officers were bestowed with the same powers of police officers to search a location without a warrant where there was reasonable and probable cause to do so.
28. It was submitted on behalf of the Claimant that his liberty was restrained by the soldiers and coast guard officers and, it is for the Defendant to demonstrate that they had due authority to do so by the Commissioner of Police, either a general or a specific request to the Commander of the Defence Force and that in the absence of such evidence the Claimant's detention was unlawful.
29. It was also argued that even in the absence of the request from the Commissioner of Police, the Defendant failed to demonstrate that the soldiers and coast guard officers had reasonable and probable cause to suspect that an offence within the EPR had been committed at the premises to justify the search without warrant and the detention of the Claimant.
30. The Defendant submitted that the soldiers and coast guard officers had reasonable and probable cause to detain the Claimant and effect the search.
31. At the time of the incident, the EPR was in force. Under the EPR the police were afforded additional powers to maintain law and order during the state of emergency. Regulation 15 provided:

“15. Notwithstanding any rule of law to the contrary, a police officer may, without a warrant and with or without assistance and with the use of force, if necessary –

- (a) enter and search any premises; or
- (b) stop and search any vessel, vehicle or individual, whether in a public place or not,

if he suspects that any evidence of the commission of an offence against regulations 9, 13 or 14 is likely to be found on such premises, vessel, vehicle or individual and may seize any evidence so found.”

32. Regulation 9 dealt with the unlawful possession of firearms, ammunition or explosives. It provided that:

“9(1) Subject to the provisions of regulation 12, any person who, without lawful authority, the burden of proof as to the lawful authority laying upon him, purchases, acquires or has in his possession any firearm, ammunition or explosive is guilty of an offence.

(2) A person who consorts with or is found in the company of another person, who, without lawful authority, has in his possession any firearm, ammunition or explosive in the circumstances which raise a reasonable presumption that he intends or is about to act or has recently acted with such other person in a manner prejudicial to public order or public safety, is guilty of an offence

(3) In any prosecution for an offence under this regulation:

- (a) a person who is proved to have had in his possession or under his control anything whatsoever in or on

which is found any firearm, ammunition or explosive shall, until the contrary is proved, be deemed to have been in possession of such firearm, ammunition or explosive;

(b) where it is established to the satisfaction of the magistrate that a person accused under subregulation (2) was consorting with or in the company of any person who had in his possession any firearm, ammunition or explosive, it shall be presumed, until the contrary is proved that such last mentioned person had the same in his possession without lawful authority.

33. Regulation 13 dealt with the possession of certain documents. It states:

“No person shall have in his possession or under his control any document of such a nature that the dissemination of copies thereof is likely to lead to breach of the peace or to cause disaffection or discontent among persons.”

34. Regulation 14 was about statements prejudicial to public order. It provided:

“14. (1) No person shall

(a) endeavour, whether orally or otherwise, to influence public opinion in a manner likely to be prejudicial to public safety and order; or

(b) do any act or have any article in his possession with a view to making or facilitating the making of any such endeavour.

(2) No person shall in any public place or in any vehicle make use of any instrument for the amplification of sound except with the permission of the Commissioner of Police.

(3) No person shall, on any premises in his occupation or under his control, make use of or cause or permit any person to make use of any instrument for the amplification of sound, whereby reports or statements may be heard from or about such premises by members of the public, except with the permission of the Commissioner of Police.

35. Regulation 22 afforded the soldiers and the coast guard officers certain privileges. Regulation 22 provided:

“22 (1) Notwithstanding any rule of law to the contrary, the Commander of the Defence Force established under the Defence Act, shall hold his forces in readiness to assist, and if called upon by the Commissioner of Police shall co-operate with and assist, the Commissioner of Police in the performance of his duties under these regulations.

(2) A member of the Defence Force referred to in subregulations (1) shall, for the purposes of these Regulations, have the powers of a Police officer and shall, where acting in accordance with any general or special instructions from the commander of the Defence Force or of any superior officer of that Force given in pursuance of subregulation (1), be deemed to be acting in performance of the duties imposed on a police officer by these Regulations or by any Orders made thereunder.

(3) A request of the Commissioner of Police for assistance under subregulation (1) may be made generally or with reference to some particular occasion or for some specific purpose.”

36. In **Ryan Henry and Others v The Attorney General and Others**<sup>6</sup> Rampersad J interpreted the aforesaid provisions of the EPR and at paragraph 85 he stated –

“85. Notwithstanding the very wide range of search, arrest and detention given to the defendants by the Emergency Powers Regulations it was still incumbent on them to establish that the condition precedent for invoking the regulations had been first satisfied in that the suspicion referred to therein had been aroused and that the detention was made on reasonable grounds. The claimants were detained for the purpose of conducting a search and not arrested on the strict sense of the word. In that regard reference is made to regulation 15 of the Emergency Powers Regulations 2011 which states

*15. Notwithstanding any rule of law to the contrary, a police officer may, without a warrant and with or without assistance and with the use of force, if necessary –*

*(a) enter and search any premises; or*

*(b) stop and search any vessel, vehicle or individual, whether in a public place or not,*

*If he suspects that any evidence of the commission of an offence against regulation 9, 13 or 14 is likely to be found on such premises, vessel, vehicle or individual and may seize any evidence so found.”*

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<sup>6</sup> CV 2014-0076

37. The role of the Defence Force in Regulation 22(1) was to assist the Commissioner of Police in the performance of his duties under the EPR which included the searching of premises without a warrant. Therefore, implicit in Regulation 22 (1) was that before entering and searching any premises the members of the Defence Force i.e. soldiers and the coast guard officers had to be satisfied that it was an act to assist the Commissioner of Police.
38. Once that hurdle is crossed, the Defendant must demonstrate that the soldiers and coast guard officers had reasonable and probable cause to detain the Claimant. The test when considering false imprisonment as set out in the Privy Council case of **Chandrawtee Ramsingh v The Attorney General of Trinidad and Tobago**<sup>7</sup> is:
- a. The detention of a person is *prima facie* tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.
  - b. It is for the arrestor to justify the arrest.
  - c. A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.
  - d. Thus the officer must subjectively suspect that that person has committed such an offence.
  - e. The officer's belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.
  - f. Any continued detention after arrest must also be justified by the detainer.

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<sup>7</sup> [2012] UKPC 16 at paragraph 12

39. **Ramsingh** reinforces that the onus was on the soldiers and coast guard officers to justify the unlawful detention and/or arrest and to establish reasonable and probable cause for it.<sup>8</sup> The test is partly objective and partly subjective.<sup>9</sup> It is subjective because the officer must have formulated a genuine suspicion within his own mind that the accused person, (in this case the Claimant) committed the offence. It is partly objective as reasonable grounds for the suspicion are required by the officer at the time when the power is exercised.
40. In my opinion the Defendant failed to discharge the burden that the condition precedent in Regulation 22 was satisfied before invoking Regulation 15 and that the soldiers and coast guard officers, in particular Capt. Booker and/or Cpl Joseph had reasonable and probable cause to suspect that an offence under Regulation 9,13 or 14 had been committed to justify the search and detention of the Claimant. I have arrived at this position for the following reasons.
41. Firstly, there was no evidence from either Capt. Booker or Cpl Joseph that they were acting to assist the Commissioner of Police. Capt. Booker's evidence in chief is noticeably silent of any request or instructions from the Commissioner of Police to him or his seniors. Capt. Booker testified that on 1 September 2011, at approximately midnight he received a call from Major D Metevier who told him to gather men and report to Staubles Bay, Trinidad and Tobago Coast Guard Headquarters for a joint exercise to be conducted between members of the Regiment and the Coast Guard. He called Naval Lieutenant De Gannes of the Special Naval Unit who told him that some members of the Regiment would be searching a designated area

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<sup>8</sup> *Dallison v Caffery* [1965] 1 Q.B. 348 at 370).

<sup>9</sup> *O' Hara v Chief Constable of the Royal Ulster Constabulary* [1997] 1 AER 129 p 138j –139a) per Lord Hope of Craighead



for specific or illegal items. He stated that at approximately 4:30 am he gathered 60 soldiers and they boarded Regiment trucks to be transported to Staubles Bay and Cpl Joseph was one of the soldiers present for this exercise.

42. According to Capt. Booker, upon arrival at Staubles Bay they were briefed by Naval Lieutenant De Gannes and Lieutenant Commander Dindial who instructed that the soldiers along with the coast guard officers would conduct raids on specified targets at Monos Island, the Island and Almoorings Fishing Cooperative. He said that the raid to be conducted on the Island was for arms, ammunition and illegal narcotics.
43. In cross-examination Capt. Booker confirmed that he was in charge of the operation. Capt. Booker agreed that he did not indicate in his witness statement that he was informed of the source of Major Metevier's orders. He also agreed he did not state the source of Commander Dindial's orders.
44. Cpl Joseph's evidence did not assist the Defendant's case. His evidence in chief was that on the 1 September 2011 at approximately midnight, Capt. Booker instructed him to gather soldiers and report for an exercise involving the search for guns and drugs in certain locations. This exercise was as a result of the State of Emergency and instructions were received from the Minister of National Security to look for drugs, guns and criminal elements.
45. However, Cpl Joseph's evidence that the instructions for the search was from the Minister of National Security was discredited in cross-examination since he admitted that he was not present when Capt. Booker received his instructions; he was not privy to the conversation between the Minister and the person who communicated the order to Capt. Booker;

and he did not have personal communication to the Commander of the Defence Force in this matter. Cpl Joseph also agreed that he did not know where he was going until he arrived and those were the extent of his orders on that day.

46. Secondly, the Claimant's evidence that the premises were searched on the day before the incident, i.e. the 30 August 2011, and nothing illegal was found was not challenged by the Defendant. Both Capt. Booker and Cpl Joseph's witness statements were noticeably silent on the Claimant's evidence that the premises were searched on the 30 August 2011 and nothing illegal was found.
47. Thirdly, there was no evidence from the witnesses for the Defendant of any additional information which was received between the 30 August 2011 and the 1 September 2011 which caused them to suspect that an offence under Regulations 9, 13 or 14 had been committed. According to the Claimant's witness statement on 1 September 2011, the soldiers and coast guard officers returned to the premises with a bolt cutter and attempted to open the door. The Claimant was woken up by Ryan and one Allister who told him, "Coastguard." He stated that he did not consume much alcohol at that time and he was not drunk at the time. The Claimant indicated to the soldiers and coast guard officers that he had a key to the premises and could simply open the lock for them. The Claimant was directed to open the door and then told to lie flat on his face with his hands behind his head. The coast guard officers stormed the house and put all of the occupants, including the Claimant to sit outside in the gallery. He did not curse the officers or behave in a hostile manner or obstruct Cpl Joseph.
48. Thereafter, additional coast guard officers entered the house followed by the soldiers. The coast guard officers ordered and escorted the Claimant

upstairs at gunpoint. One of the soldiers asked the Claimant, “where the drugs and guns?” to which he replied that he does not smoke and had no guns. He was then made to kneel down with his hands clasped behind his head where a soldier asked him the same question again. He was then beaten about his body until his head was bleeding.

49. In cross-examination the Claimant testified that he was the caretaker of the house on the premises. He agreed that he was at the premises with other people, namely Ryan, Sujes McIntosh and Allister and he did not know the names of the other people. The Claimant explained that on the outside of the front door, there is a padlock with a chain which they used as a lock. He stated that when he came down to meet the coast guard officers, there was a padlock and he told them that he had a key and could open the door for them. The coast guard officers demanded that he open the door and upon doing so he was apprehended. The coast guard officers then searched the house and as the place got brighter, they put everyone outside and took full control of the house. Thereafter, the Claimant stated that the soldiers came in. The Claimant agreed that the soldiers made him kneel to the ground with his hands clasped behind his head where a soldier asked him “where the drugs and guns” and that he was beaten thereafter. The Claimant testified that a coast guard officer escorted him at gunpoint upstairs. He was then surrounded by 7 soldiers, but he could not specifically identify them.
50. Capt. Booker testified that the coast guard officers were instructed to arrive at the Island first and to secure the premises, by securing any personnel found and checking for traps. After this, the soldiers were instructed to conduct a detailed search of the premises.

51. According to Capt. Booker, he stayed on the vessel for thirty to forty minutes until the coast guard officers had secured the area and upon his arrival the soldiers conducted a search which lasted over approximately 40 minutes. During the exercise, he saw Cpl Joseph escorting a man with an abrasion on his head out of the house. Capt. Booker stated that towards the end of the operation, he went to the seafront and spoke to the seven civilians, at which time he found out the injured man was the Claimant. Capt. Booker testified that the Claimant was not detained by himself or his soldiers for a period of 6 hours but he could not state how long the Claimant was in fact held in custody for as he was left in the care of the coast guard officers.
52. In cross-examination Cpl Joseph stated that he was trained in logistics with only basic combat training and that this was his first search and that he was inexperienced to do that task.
53. Based on Capt. Booker's evidence there was no information, which was brought to his attention which caused him to suspect that an offence was being committed on the premises.
54. Cpl Joseph testified that when they arrived at the Island it was dark and it took the coast guard officers approximately 45 minutes to secure the premises and by that time, the sun was shining brightly. He stated that the soldiers could have seen the house that they were about to search from where they were waiting on the water but he could not see what was transpiring between the coast guards and the occupants.
55. According to Cpl Joseph when the soldiers arrived at the house located on the Island, they were split into groups by Capt. Booker and some of the occupants had already been brought out to the front of the house by the

coast guard officers. Capt. Booker put Cpl Joseph into a group of four and instructed them to search the upstairs of the house. At first, the downstairs of the premises was searched by one group who looked for hiding occupants. Thereafter, Cpl Joseph and Private Paul along with the two other soldiers went upstairs to search where Cpl Joseph noticed that a room appeared ransacked.

56. Cpl Joseph said he then asked one of the occupants in front of the house “who was staying in the room?” The Claimant responded and proceeded to come up to the staircase. Cpl Joseph noticed that he had to be assisted by a coast guard officer as he was behaving in a drunk and disorderly manner as he was staggering and using obscene language while going up the staircase.
57. Cpl Joseph stated that when he told the Claimant to enter the room, he started cursing and gesturing his hands and said: “What are you looking for? We don’t have nothing here.” When told that he wanted to search the room in his presence, the Claimant put his hands on the doorframe and turned his back towards Cpl Joseph, which the latter understood to be a form of resistance.
58. The Claimant has disputed Cpl Joseph’s version. Even if Cpl Joseph’s version was true, at best, it only demonstrated that the Claimant was intoxicated and that his actions in resisting Cpl Joseph from entering and searching his room was due to his intoxication and not due to any other reason to cause Cpl Joseph to be suspicious of any illegal activity within Regulations 9,13 or 14.
59. Fourthly, the period that the Claimant was detained by the soldiers and the coast guard officers was at least 5 hours and this was unreasonable given

that there was no basis to suspect any offence. Capt. Booker testified in cross-examination that he could not state how long the Claimant was detained by the soldiers since he was left in the care of the coast guard officers. Cpl Joseph admitted in cross-examination that the Claimant was detained for 5-6 hours while the soldiers and the coast guard officers searched the Island.

60. Lastly, there was no evidence by the Defendant's witnesses that the Claimant was informed of his constitutional rights and privileges. Cpl Joseph admitted in cross-examination, that he did not inform the Claimant of his constitutional rights and privileges and as far as he was aware no other soldier did so. This supported the Claimant's case and his evidence that throughout his entire detention he was never informed of his right to retain or instruct a legal advisor of his choice.

#### **WAS THE CLAIMANT ASSAULTED AND BEATEN?**

61. **Clerk and Lindsell on Torts**<sup>10</sup> at 15-12 defines an assault:

"An assault is an act which causes another person to apprehend the infliction of immediate, unlawful, force on his person'. The defendant's act must also be coupled with the capacity of carrying the intention to commit a battery into effect."

62. **Clerk and Lindsell on Torts**<sup>11</sup> at 15-09 describes a battery as:

"The direct imposition of any unwanted physical contact on another person may constitute the tort of battery. There is no requirement to prove that the contact caused or threatened any physical injury or harm... The culpable touching may take several

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<sup>10</sup> 22<sup>nd</sup> Edition at 15-12,

<sup>11</sup> 22<sup>nd</sup> Edition, 15-09

forms. Thus, so long as it is direct, anything which amounts to a blow, whether inflicted by hand, weapon or missile, is a battery.”

63. The Claimant pleaded the following particulars of personal injuries arising out the assault and battery:
- a) The Claimant bears the marks of evidence of the said assault and battery in his mind/psyche, emotionally, mentally and psychologically, and also upon his physical body.
  - b) The Claimant sustained approximately 6cm to 7cm laceration over middle of scalp (parietal area) with multiple soft tissue injuries and experienced resulting pain and suffering. The Claimant sustained tenderness in the left chest wall and was in excruciating pain. The Claimant also sustained 0.5cm abrasion over his left and right temple and swelling of the upper lip. The Claimant also experienced headaches and chest pains.
  - c) The Claimant suffered Post-Traumatic stress disorder and that he has developed a psychological disorder as a result of the incident and he continuously remembers the incident daily, and he continues to be affected by it. He continues to suffer from psychological and physical symptoms, he is stressed and he experiences flashbacks. He suffers from insomnia, anxiety, memory loss, difficulty with concentration, orientation, headaches, dizziness, visual and hearing problems and difficulty with speech.
  - d) The Claimant developed hypoglycaemia as a result of the insulin use. This altered his mental state as a result of his low blood sugar levels.

64. It was submitted on behalf of the Claimant that he was repeatedly assaulted and battered during his interactions with Cpl Joseph on the 1 September 2011.
65. Counsel for the Defendant submitted that the Claimant's version of the alleged assault and beating ought not to be believed since the Claimant failed to call any supporting witness to support his claims of assault and battery; there were material inconsistencies in the Claimant's version; if any force was used it was proportionate; and the Claimant's medical evidence did not support his claim that he was viciously assaulted or assaulted in the manner in which he asserts in this claim.
66. The Claimant's version of how he was savagely beaten by the soldiers who were conducting the search was set out in detail in his witness statement which was consistent with his pleaded case. According to the Claimant after he was ordered out of the house by the coast guard officers, Ryan was ordered to re-enter the house and then he was ordered into the house. The coast guard officers ordered him to go upstairs and he was escorted at gunpoint.
67. According to the Claimant, after he arrived in the house he saw Ryan kneeling down on the ground with his face facing downwards. He was surrounded by 4-5 soldiers with big machine guns pointed at Ryan. Ryan was crying and shivering. One of the soldiers approached the Claimant and asked him "where the guns and drugs" to which he replied that he did not smoke and he did not have any gun. The soldiers then made him kneel down with his hands clasped behind his head and a soldier again asked him 'where the drugs and guns?' A soldier then hit him twice on the left side of his temple with a gun butt. A soldier then hit him 4 times with a piece of



flat bar iron. He sustained one blow across his neck, one across his spine and 2 across his back. He then felt a gun butt to the left side of his upper body, just beneath his heart which was inflicted with a "Galil" Machine Gun. He fell to the ground gasping for air at this point as he was experiencing difficulty breathing. A soldier then stood on his head with his whole body weight and grounded his boots into his right ear. He immediately experienced deafness in that ear. He then returned to a kneeling position where he suddenly felt a blow to the centre of his skull which was inflicted by a soldier with a piece of iron. Blood started gushing from his head unto his shoulders. He immediately fell into a state of trance and he felt confused and immobilised at this point as a result of the beating to his head.

68. The Claimant and Ryan were then taken downstairs and together with one Allister they were then ordered to go into the sea until the soldiers could only see their necks. When they reached neck level, the soldiers began pelting them with stones and told them, "don't look back". After emerging from the water and put to sit around the table and beach chairs at the beach, Allister fainted.
69. The Claimant stated that the coast guard officers then took him, Ryan and Allister to the Coast Guard base and placed them in an ambulance where they were escorted to the Port of Spain General Hospital.
70. In cross-examination, Counsel for the Defendant brought to the Claimant's attention that he stated in his witness statement that he was surrounded by 4-5 soldiers. The Claimant stated that there were about 5 soldiers in the room where he was beaten but there were more soldiers standing in the corridor as he made his way up to the room.

71. The Claimant denied in cross-examination that Cpl Joseph put his head outside the upper floor of the house and asked who the occupant of this room was. He stated that the coast guard officers had first escorted him to the beach then soldiers took him at gunpoint from the beach and escorted him up the stairs.
72. The Claimant relied on a medical report which he received from the Port of Spain General Hospital dated the 3 April 2012 (“the POSGH Report”) which stated the findings when the Claimant was treated on the 1 September 2011. According to the POSGH Report the Claimant was at the Accident and Emergency Department after a few hours of an alleged assault with batons on the 1 September 2012. The Claimant complained of head trauma, chest pain, no loss of consciousness, no headaches, and vomiting. The examination of the Claimant revealed that the Claimant was alert and oriented in mild painful distress, 0.5 abrasions to both right and left temples, swelling of upper lip, about 7 cm laceration over parietal scalp which was sutured and tenderness over the chest wall. The skull and chest x-rays showed no bony injuries and the patient was diagnosed with multiple soft tissue injuries and scalp lacerations.
73. Cpl Joseph’s version was that when he was in the house he then asked one of the occupants in front of the house “who was staying in the room?” The Claimant responded and proceeded to come up to the staircase. Cpl Joseph noticed that the Claimant had to be assisted by a coast guard officer as he was behaving in a drunk and disorderly manner as he was staggering and using obscene language while going up the staircase.
74. Cpl Joseph stated that when the Claimant arrived, he smelt alcohol on his breath. He told the Claimant to go into the room but the Claimant refused to do so and he started cursing and gesturing his hands and said “What are

you looking for? We don't have nothing here." When Cpl Joseph told the Claimant he wanted to search the room in his presence, the Claimant put his hands on the door frame and turned his back towards Cpl Joseph. Cpl Joseph stated that in response he placed his hand on the Claimant's shoulder to indicate to him to step into the room. The Claimant then spun around and attempted to grab Cpl Joseph's Gallil assault rifle when the two fell backwards causing the Claimant's head to be struck on the wrought iron bed frame and they both fell to the ground.

75. After they both stood up, Cpl Joseph noticed that the Claimant was holding the back of his head where there was a little blood. Cpl Joseph said he inspected and he noticed a little wound. He then used a jersey from the room to apply pressure on the wound to the Claimant's head and willingly took him downstairs.
76. Cpl Joseph then told Capt. Booker what happened, and the latter told him to write a report which he wrote as soon as he got back to Camp Ogden.
77. The Specific Use of Force Report Form<sup>12</sup> ("the Use of Force Report") was one of the contemporaneous documents which Cpl Joseph annexed to his witness statement.
78. In cross-examination Cpl Joseph stated that the Claimant responded by raising his hand and at that time he had no injuries. It was brought to his attention that he said in his witness statement in the instant matter that he noticed that the Claimant was drunk whilst coming up the staircase. He agreed that he did not mention anything about alcohol in the Use of Force Report. He then insisted that he smelt alcohol but agreed that if he smelt it, he would have put it in the Use of Force Report but he did not. Further,

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<sup>12</sup> Exhibit D.J. 1 of witness statement of Cpl Joseph

he accepted that he stated in the Use of Force Report “probably marijuana” and he agreed that this was not mentioned anywhere in his witness statement.

79. Cpl Joseph maintained that the Claimant blocked his entry when he told the Claimant to go into the room. He explained that at first, he thought the Claimant was just playing with him because in his opinion he was drunk. He agreed that his reaction was to put his hand on his shoulder without using any force at all and he placed his right hand on the Claimant’s left shoulder. He agreed that he did not know what the Claimant was trying to do when he claimed that he spun around in an attempt to grab his rifle because he did not know what is going on in a drunk man’s mind.
  
80. Cpl Joseph agreed that he signed a witness statement in another matter **CV 2014-00736 Ryan Henry and ors v Capt. Booker and ors** (“the Ryan Henry matter”) which was where Ryan had brought a civil claim in the High Court against Capt. Booker and other persons arising out of the same incident. Counsel for the Claimant brought to Cpl Joseph’s attention that in his witness statement in the Ryan Henry matter he said, “I placed my hand on his shoulder and he turned around and flung his hand in my direction. I did not know if he was reaching for my firearm. I held my rifle with my left hand and moved towards him. I used minimum force and moved towards him and he fell back and hit his head”. Cpl Joseph accepted that in his witness statement in the instant matter he said that the Claimant hit the back of his head on the wrought iron of the bedframe. In cross-examination Cpl Joseph admitted that the evidence in the witness statement in the Ryan Henry matter was correct. He also admitted that there was no mention of a bedframe in the Use of Force Report.

81. Cpl Joseph also admitted in cross-examination that in his witness statement in the instant matter he said that the Claimant also burst his lip as his weapon hit him in his face. He agreed that he did not mention this in his witness statement in the Ryan Henry matter or in the Use of Force Report.
82. Cpl Joseph accepted in cross-examination that in his witness statement in the instant matter he said that he noticed a little wound at the back of the Claimant's head and he used a jersey and applied pressure. However, in his witness statement in the Ryan Henry matter he said he used a cloth and he applied pressure to the Claimant's head.
83. Cpl Joseph denied that the Claimant was made to kneel when he came upstairs with hands behind his head and that the Claimant was dealt four blows with a piece of iron by him or members of the Defence Force. He said that he did not know anything about an officer striking the Claimant in his chest with the rifle causing him to wheeze and have difficulty breathing; the Claimant falling to the ground; an officer grounding his boot into his ear; and the Claimant being dealt another blow with the iron which caused the blood to gush from the top of his head.
84. Cpl Joseph also testified that he did not see when the occupants, including the Claimant, were ordered to walk into the sea at neck level. He said it is untrue that members of the Defence Force hurled things at him in the sea.
85. Capt. Booker's evidence was that he was not present during the alleged assault of the Claimant. He testified that he saw Cpl Joseph escort a man outside the house and he noted that there was an abrasion on his head. He inquired and Cpl Joseph stated that the man had tried to grab his rifle and a scuffled ensued during which the man had fallen on his own accord

and became injured. He instructed Cpl Joseph to escort the Claimant to the seafront and to fill out the Use of Force Report.

86. In cross-examination, Capt. Booker agreed he signed a witness statement in the Ryan Henry matter. He agreed that in his witness statement in the Ryan Henry matter there was no mention of the Claimant trying to grab Cpl Joseph's rifle as he stated in his witness statement in the instant matter. He explained the difference due to the amount of time that has elapsed.
87. In my opinion, the Claimant's version was more credible for the following reasons. Firstly, the Claimant's evidence in chief and cross-examination was in a large part consistent with his case in terms of where, the sequence, the extent and the manner of the assault and battery. I have attached no significance to the inconsistency in the Claimant's evidence in cross-examination on the difference in the number of soldiers who beat him. In my opinion, it is highly improbable that whilst the Claimant was being beaten he could have kept an accurate account of who and the number of persons who were actually administering the blows to him since all he would have been doing was trying to evade the said blows. In any event, the evidence of the Defendant's witnesses, both Capt. Booker and Cpl Joseph was that there were several soldiers in the upstairs of the house when the Claimant was brought in to have the search conducted.
88. Secondly, the POSGH Report in large part supported the Claimant's evidence that he was assaulted and beaten and it does not support the Defendant's position that the force which was used was proportionate. The Claimant's evidence in chief was that he was struck twice with a gun butt on his left temple; he was hit one blow across his neck with a flat iron bar; he received one blow on his spine with a flat iron bar; and he was

struck on his left upper body with a Galil gun. In cross-examination the Claimant testified that he received more blows than he had initially pleaded. The POSGH Report documented that the Claimant suffered soft tissue injuries, a 7 cm laceration to his head which required stitches, swelling of the upper lip, tenderness over chest wall and abrasions to right and left temple. Although the Casualty Card attached as C.L 4 of the Claimant's witness statement stated that the Claimant was beaten with a baton, I have attached little weight to this inconsistency since it did not change the fact that the Claimant was beaten.

89. Further, I do not accept that the Claimant's evidence was an embellishment of his injuries as described in the POSGH Report since it must be taken in the context that after the Claimant was beaten he was made to walk out and stand in the sea up to his neck and he was only taken to the hospital for examination after the search of the Island was completed which was at least 5 hours after the incident. Given that context it was reasonable that by that time the Claimant's pain would have been mild. In any event, the failure by the x-ray reports to show that the Claimant did not suffer any broken bones as result of the beating did not in any way make it less of an assault and battery since the Claimant suffered soft tissue injuries, a laceration to his head which required stitches, and abrasions.
90. In any event, even if the Claimant's evidence was an exaggeration of his injuries, the nature of the Claimant's injuries as set out in the POSGH Report still did not support the Defendant's case that the force used was proportionate. In my opinion if Cpl Joseph's version of how the Claimant suffered his injuries was correct, then the injuries the Claimant would have suffered would have been a small cut to his head which was not supported by the POSGH Report.

91. Thirdly, I have attached no weight to Capt. Booker's evidence on this issue since he was not present when the assault and battery took place and his evidence simply related what he was told by Cpl Joseph.
92. Fourthly, there were several inconsistencies in Cpl Joseph's evidence in chief and his cross-examination, in particular the assertions: that the Claimant smelt of alcohol; the Claimant injured himself when he fell back and hit his head on a wrought iron bedframe; the manner in which the Claimant burst his lip; and the wound at the back of the Claimant's head.
93. Fifthly, Cpl Joseph's evidence that the Claimant smelt of alcohol was not supported by his contemporaneous document which was the Use of Force Report.
94. Lastly, despite the Claimant's case being that he was beaten by more than one soldier and the Defendant's case was that there were several soldiers in the house when the Claimant was allegedly assaulted, the Defendant only relied on the evidence of Cpl Joseph to dispute the Claimant's version of how he suffered the injuries and it failed to call any other soldier who was in the house when the injuries to the Claimant occurred. In my opinion, if Cpl Joseph's version was accurate it was highly probable that one of the soldiers who was either in the house, the room or on the stair would have observed the Claimant's intoxicated state or would have seen the Claimant attempt to block the entrance to the room or even notice that the Claimant hit his head on a bed frame. The failure to call any other soldier raised doubt about the truthfulness of Cpl Joseph's version of how the Claimant's injuries occurred.



**IF THE CLAIMANT SUCCEEDS IN PROVING HIS CLAIM WHAT IS AN APPROPRIATE AWARD OF DAMAGES TO COMPENSATE THE CLAIMANT?**

95. There are two aspects of the Claimant's damages to be assessed namely his claim for false imprisonment and for the assault and battery.

**False imprisonment**

96. The object of an award of damages is essentially to put the Claimant back into the position he/she would have been in if he/she had not "*sustained the wrong for which he is now getting his compensation or reparation*"<sup>13</sup>." 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. General damages for false imprisonment are assessed under the heads of "injury to liberty" and "injury to feelings."

**Aggravated Damages**

97. In awarding damages, the Court can award aggravated damages where there are factors which can justify an uplift in the form of an award for aggravated damages. In **Bernard v Quashie**<sup>14</sup>, it was held that a single figure is awarded for all heads of compensatory damage, including aggravated damages. In **Thompson v Commissioner of Police of the Metropolis**<sup>15</sup> Lord Woolf MR in giving the judgment of the court stated at page 516:

"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

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<sup>13</sup> Livingstone v Raywards Coal Co. (1880) 5 App.Cas.25 at 39

<sup>14</sup> Civ App. No. 159 of 1992, at page 9

<sup>15</sup> [1998] QB 498

humiliating circumstances at the time of arrest or the prosecution which shows that they behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution.

98. It was submitted on behalf of the Claimant that he was detained for not less than four hours (i.e. the time from arrival on the Island to the time of the incident) and that the period of unlawful detention was not less than six hours of unlawful detention. Further, the Claimant was interrogated during his period of detention, not advised of any rights and he was detained for no apparent purpose. As such an award of \$35,000.00 which includes an uplift for aggravating factors would be appropriate. Counsel referred the Court to the cases of **David Baboolal and anor v the Attorney General**<sup>16</sup>; **Adesh Maharaj v the Attorney General**<sup>17</sup>; **Ivan Neptune v the Attorney General**<sup>18</sup> and **Trishuana Scarlett v the Attorney General**<sup>19</sup>
99. Counsel for the Defendant made no submission on any award of damages to be made to the Claimant for the false imprisonment.
100. Based on Cpl Joseph's evidence in cross-examination the Claimant was in the custody of the soldiers and the coast guard officers for at least 5 hours. I have found that during this time the Claimant was assaulted and battered and even after that he was made to walk into the sea up to neck level where he was pelted with stones. However, there was no evidence of the duration of time this took place. He was also interrogated in circumstances

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<sup>16</sup> CV 2008-02487

<sup>17</sup> S 788 of 98

<sup>18</sup> CV 2008-03386

<sup>19</sup> CV 2016-03548

where the soldiers and coast guard officers did not have reasonable and probable cause to suspect that an offence had been committed and he was not informed of his constitutional rights.

101. In determining the award of general damages, in addition to the evidence, I also considered the following relevant judicial trends:

(a) **Adesh Maharaj v The Attorney General.** On the 13 May 2011 Pemberton J (as she then was) awarded \$20,000.00 for the detention of the Claimant in a police station for 2 ½ hours in circumstances in which the original portion of his detention was on lawful grounds.

(b) **David Baboolal and or v The Attorney General.** On the 14 June 2011 Master Mohammed awarded \$7,000.00 where the Claimants had been detained for “a little over one hour” to include the attendant stress and inconvenience.

(c) **Ivan Neptune v The Attorney General.** On 14 November 2011 de Vignes J (as he then was) awarded \$25,000.00 including an uplift for aggravation, for the unlawful detention of the Claimant for 7.5 hours.

(d) **Trishuana Scarlett v The Attorney General.** On the 21 June 2018 **Rahim J** awarded \$65,000.00 to the Claimant who was detained unlawfully for approximately 12 hours. This figure included an uplift for aggravation.

102. In my opinion, a reasonable award for the Claimant’s detention of 5 hours which includes an award for aggravated damages is \$27,000.00.

### **Assault and battery**

103. The Claimant pleaded claims for special and general damages.

### **Special Damages**

104. The Claimant pleaded the following particulars of special damages:
- a) Cost of first Psychiatric Assessment and Medical Report dated 30 March 2015 -\$600.00
  - b) Cost of second Psychiatric Assessment and Medical Report up to 15 June 2015- \$600.00
  - c) Cost of CT Scan Brain Examination- \$1,500.00
105. The Claimant annexed copies of receipts to prove that he had made payments for the sums he claimed. His evidence was not challenged.
106. I am satisfied that the receipts is prima facie proof that the Claimant did pay for these expenses which arose from the injuries he sustained during the incident. I award the total sum of \$2,700.00.

### **General damages**

107. It was submitted on behalf of the Claimant that an appropriate starting point for the award of general damages is \$300,000.00 with an uplift of at least \$50,000.00 given the aggravating features. Counsel referred the Court to the learning in **Geeta St Clair v The Attorney General**<sup>20</sup>; **Reynold Kalloo, Tyrone Stevenson v Tidewater Marine West Indies Limited**<sup>21</sup> and **Raffick Mohammed v Myra Bhagwansingh**<sup>22</sup> in support of his submissions.
108. Counsel for the Defendant argued that an appropriate award of damages is no more than \$65,000.00. In support, the Defendant relied on the learning from **Jason Raymond v The Attorney General**.<sup>23</sup>

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<sup>20</sup> CV 2008-02269

<sup>21</sup> CV 2009-00488

<sup>22</sup> CV 2015-01034

<sup>23</sup> CV 2016-00029

109. Given this large gap in the award suggested by both parties I examined the evidence advanced on behalf of the Claimant to support his claim.
110. It was common ground that in assessing the general damages to be awarded to the Claimant for the assault and battery, the following factors laid down by Wooding CJ in the leading authority of **Cornilliac v St. Louis**<sup>24</sup> are to be considered:
1. The nature and extent of the injuries suffered;
  2. The nature and gravity of the resulting physical injuries;
  3. The pain and suffering that the Claimant has to endure;
  4. The loss of amenities of which the Claimant has been deprived;  
and
  5. The loss of pecuniary prospects in respect of both employment  
and retirement benefits.

**The nature and extent of the injuries suffered**

111. According to the medical report dated the 3 April 2012 from the Port of Spain General Hospital and the casualty notes, the physical injuries which the Claimant suffered were: head trauma; chest pain; 0.5 abrasions to the left and right temples; swelling of the upper lip and a 7 cm abrasion over the parietal scalp which required stitches.

**The nature and gravity of the resulting physical injuries**

112. The Claimant testified that as a result of the incident, he has been diagnosed with Post Traumatic Stress Disorder. It has affected him both psychologically and physically. He gets flashbacks and he suffers from anxiety, insomnia and memory loss. He has difficulty concentrating;

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<sup>24</sup> (1965) 7 WIR 491

difficulty with orientation; headaches; dizziness; visual and hearing problems as well as speech difficulties. The Claimant also stated that due to insulin use, he has developed hypoglycaemia which has altered his mental state as a result of low blood sugar levels. He also stated that he has had to undergo a series of psychiatric assessments as well as CT Brain scan examination.

113. The Claimant stated in cross-examination that after the incident, he got sick because his sugar level was not going down. He agreed that none of his medical records stated that he developed hypoglycaemia as a result of insulin. He agreed that he did not produce any medical evidence to confirm his assertion.
114. Professor Hutchinson is a consultant psychiatrist and the Claimant has been his patient since 2014. Professor Hutchinson testified that the Claimant suffered the following symptoms since sustaining his injuries on the 1 September 2011: cognitive impairment; emotional lability; distress and accompanying behavioural changes; an inability to sustain or function effectively in interpersonal relationships; short term memory loss; difficulty with concentration and attention to detail; difficulty sleeping; and easily irritated.
115. Professor Hutchinson has diagnosed the Claimant with Post Traumatic Stress Disorder and indicated that the Claimant's decline in functioning and the degree of his symptomatology are in the range of 40-50% meaning that he is now functioning at half of the capacity that he was able to function before the incident. He stated that the Claimant continues to require ongoing psychiatric support and in his opinion will continue to do so.

116. In cross-examination Professor Hutchinson confirmed that he did not know the Claimant prior to 2014. He agreed that in his witness statement he did not put forward evidence to show how the Claimant was functioning before he made his finding that the degree of his symptomatology is in the range of 40-50%. He also agreed that he did not know what could have happened between 2011, the time of the incident and 2014, the time the Claimant became his patient.
117. Professor Hutchinson also agreed that in his witness statement he did not state how the Claimant's blood sugar has affected his findings. He agreed that he did not state how a person with diabetes will be affected by having a lack of sugar and that the Claimant may be diabetic. He agreed that the Claimant's behaviour could have been caused by a multitude of other factors.
118. In re-examination, Professor Hutchinson clarified that the Claimant's hypoglycaemic episodes occurred at intervals of time precipitated by some stressor.

#### **Pain and suffering**

119. The Claimant testified that he received 9 stitches for his injuries. He sustained a 6-7 cm laceration over the middle of his scalp with soft tissue injuries which caused him extreme pain and suffering. He said that he experienced excruciating pain because of the injury on his left chest wall. He suffered a 0.5cm abrasion over his left and right temples as well as swelling on his upper lip. As a result of his injuries he suffered severe headaches and chest pains. His evidence on the extent of the pain he suffered as a result of the injuries was unchallenged in cross-examination.

### **Loss of Amenities**

120. There was no evidence that the Claimant suffered any loss of amenities as a result of the injuries he sustained from assault and battery.

### **Loss of pecuniary prospects**

121. There was also no evidence from the Claimant that the injuries he sustained has adversely affected his pecuniary prospects. Professor Hutchinson stated in his witness statement that the Claimant remained fragile and unable to earn a living which was never a problem before the incident. However, Professor Hutchinson admitted in cross-examination that his witness statement did not have any information that the Claimant had earned a living before his injuries. Therefore, I attached no weight to this aspect of Professor Hutchinson's evidence.
122. In the absence of any evidence, I concluded that there was no loss of pecuniary prospect for the Claimant.
123. In determining the measure of general damages to award to the Claimant I took into account that the injuries to the Claimant were serious but that he did not suffer any broken bones. The medical evidence supported his assertion that he suffered soft tissue injuries, laceration to his head which required stitches but no surgery was required. I also considered that the pain he endured on the day of the incident was excruciating given the nature of the injuries but that after he was treated at the Port of Spain General Hospital his pain would have decreased over the period of time. I accepted Professor Hutchinson's evidence on the resulting effects of the injuries on the Claimant with respect to the Post Traumatic Stress and the effects. However, there was no evidence on the loss of amenities and pecuniary prospects.



124. I also considered the judicial trends which were referred to me:

- (a) **Geeta St. Clair v The Attorney General**. The Claimant shot 6 times by police officers in the cross-fire between her husband and the officers. She underwent emergency surgery and subsequently abdominal and orthopaedic surgery. The pain was unbearable when she was shot and she suffered from pain and cramps due to nerve damage. She suffered from post-traumatic stress disorder. She had a 'foot drop' which caused difficulty carrying out household chores, walking fast or running, driving and difficulty wearing closed shoes. She was awarded \$300,000.00 in general damages in February 2013
- (b) **Reynold Kalloo and anor v Tidewater Marine West Indies Limited**. The Claimant was injured in an explosion while he was on a boat at sea. He had multiple injuries which were supported by the medical evidence. His injuries were to his back. He had blurred vision and loss of hearing. He also suffered with post -traumatic stress disorder, he could not walk without the use of a cane, his neck had to be kept in a brace and he had lost the ability to perform sexually. He was awarded \$130,000.00 in September 2013.
- (c) **Jason Raymond v The Attorney General**. The Claimant was awarded general damages in the sum of \$65,000.00 in July 2017. The medical evidence showed that the Claimant suffered soft tissue injuries and bruising after he was beaten by prison officers which he was incarcerated.
- (d) **Raffick Mohammed v Myra Bhagwansingh**. The Claimant was awarded general damages in the sum of \$385,000.00 in January 2019. In this matter the Claimant had been injured as a consequence of a vicious assault and battery in the form of an acid

attack. He had multiple surgical procedures to upper and lower lip, left cheek, neck, back and shoulders. He was treated for depression. His pain was excruciating during the acid attack and he remained in pain after. His jaw was permanently affected. He had suicidal thoughts and he could not take part in sports. He had to wear a compression body suit for 3 years.

125. In my opinion, the injuries the Claimant suffered were more similar to that in **Reynolds Kalloo**. The injuries in **Geeta St Clair** and **Raffick Mohammed** were more severe than the Claimant in the instant matter and in both cases the respective Claimants had undergone multiple surgeries. However, the Claimant's injuries were more severe than that in **Jason Raymond** since the Claimant in the instant case had a laceration to his head and he suffered post-traumatic stress disorder. In my opinion, an appropriate range of damages for the Claimant is between \$100,000.00 to \$150,000.00 and a reasonable award which includes an uplift for aggravated damages is \$120,000.00.

#### **Exemplary Damages**

126. Exemplary damages may be awarded where there is the presence of outrageous conduct disclosing malice, fraud, insolence and cruelty. In **Rookes v Barnard**,<sup>25</sup> Lord Devlin stated 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.

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<sup>25</sup> [1964] AC 1129

127. The function of exemplary damages is not to compensate but to punish and deter and that such an award can appropriately be given where there is oppressive, arbitrary or unconstitutional action by servants of the government. Lord Carswell in the Privy Council case of **Takitota v The Attorney General of Bahamas**<sup>26</sup> stated that, “[T]he awards of exemplary damages are a common law head of damages, the object of which is to punish the defendant for outrageous behaviour and deter him and others from repeating it ...”.
128. In computing the award for exemplary damages there are several criteria which the court should take into account. Lord Devlin in **Rookes v Barnard** set it out as follows:
- a. A plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour;
  - b. An award of exemplary damages should be moderate; and
  - c. Awards of exemplary damages should be considered in light of the means of the parties.
129. In addition to the three criteria set out by Lord Devlin the learned authors of **McGregor on Damages**<sup>27</sup> set out additional criteria as:
- a. The conduct of the parties;
  - b. The relevance of the amount awarded as compensation;
  - c. The relevance of any criminal penalty;
  - d. The position with joint wrongdoers; and
  - e. The position with multiple claimants.

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<sup>26</sup> P.C.A No. 71 of 2007

<sup>27</sup> 19<sup>th</sup> Edition at paragraphs 13-033 to 13-044

130. It was submitted on behalf of the Defendant that the circumstances of the instant matter do not warrant an award of exemplary damages; the Claimant has not particularised in his pleadings the facts which give rise to such an award; and that even if the Court is inclined to believe the Claimant's version of events, an award of general damages with uplift for aggravation would be sufficient to compensate the Claimant based on the allegations contained in the Claimant's pleadings and the evidence in support that will be adduced by the Claimant.
131. Having accepted the Claimant's version of events, I am of the opinion that an award for exemplary damages is appropriate since the actions by the soldiers and coast guard officers as servants of the government was oppressive in that the Claimant was not informed of his constitutional right to retain or instruct a legal advisor at any time during the course of the search of the premises and the Claimant's unlawful detention for 5 hours. In my opinion, such actions must be utterly condemned since persons in law enforcement are duty bound to comply with the rights which are afforded to persons under the Constitution of Trinidad and Tobago upon detention. I therefore award exemplary damages in the sum of \$20,000.00 to the Claimant.

**Damages for breach of Constitutional right**

132. The Claimant sought monetary compensation for the breach of the Claimant's constitutional right that he was not advised upon his detention of his right to retain or instruct a legal advisor of his choice. Although I have found that there was such a breach I make no separate award for damages under this head since I am satisfied that the Claimant has been so compensated under the other heads for general damages.

## **INTEREST**

133. The award of interest on damages is discretionary pursuant to section 25 of the **Supreme Court of Judicature Act**<sup>28</sup>. The Court of Appeal in **The Attorney General of Trinidad and Tobago v. Fitzroy Brown et al**<sup>29</sup> reduced interest awarded for false imprisonment, where allegations of assault were made, at the rate which is payable on money in court placed on a short term investment account. As such, bearing in mind that monies are placed in the Unit Trust account and since this was not a case where the commercial lending rates was applicable, the Court of Appeal reduced the interest awarded from 9% to 2.5% per annum.
134. Therefore, interest on general damages in the instant matter is awarded at the rate of 2.5% per annum from the date of service of the Claim Form i.e. 18 August 2015 to the date of judgment.

## **CONCLUSION**

135. I have found that the Claimant was detained on the 1 September 2011 for at least 5 hours without reasonable and probable cause since the Defendant failed to produce any evidence that Capt. Booker or Cpl Joseph were acting to assist the Commissioner of Police pursuant to Regulation 22 of the EPR. Further, there was no evidence that Capt. Booker or Cpl Joseph had any reasonable basis to search the premises for guns, ammunition and firearms on the premises on the 1 September 2011. There was no additional evidence between the search on the 30 August 2011 and the 1 September 2011 to demonstrate to the Court that Capt. Booker or Cpl Joseph or indeed any of the soldiers or the coast guard officers had any reasonable and probable cause to search and detain the Claimant on the 1 September 2011.

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<sup>28</sup> Chapter 4:01

<sup>29</sup> CA 251 of 2012

136. I have also concluded that the Claimant was not advised of his constitutional right to retain and instruct a legal advisor of his choice at any time during his detention. As such, there was a breach of this right and he is entitled to the declaration sought.
137. Further, during the search Cpl Joseph failed to use proportionate force in detaining the Claimant. I have concluded that the Claimant's injuries were consistent with the use of excessive force, which supported the Claimant's version that he was assaulted and beaten during his detention.
138. I have awarded the Claimant general damages for his wrongful detention of 5 hours in the sum of \$27,000.00 with the appropriate interest, which includes an uplift for aggravated damages. I have awarded the Claimant the sum of \$2,700.00 special damages with the appropriate interest. The Defendant to pay the Claimant the sum of \$ 120,000.00 as damages for assault and battery, which includes an uplift for aggravated damages with the appropriate rate of interest.

#### **ORDER**

139. Judgment for the Claimant.
140. It is declared that the detention of the Claimant was unconstitutional and that the failure by the members of the Defence Force and the Coast Guard to inform the Claimant of his right to retain and/or instruct without delay a legal advisor of his choice and to hold communication with him was unconstitutional and illegal.
141. The Defendant to pay the Claimant the sum of \$ 27,000.00 as damages for false imprisonment, which includes an uplift for aggravated damages with

interest at the rate of 2.5% from the date of service of the claim i.e. 18 August 2015 until judgment.

142. The Defendant to pay the Claimant the sum of \$ 2,700.00 as special damages with interest at the rate of 1.5 % per annum from 1 September 2011 until judgment.
143. The Defendant to pay the Claimant the sum of \$ 120,000.00 as damages for assault and battery, which includes an uplift for aggravated damages with interest at the rate of 2.5 % per annum from the date of service of the claim i.e. 18 August 2015 until judgment.
144. The Defendant to pay the Claimant exemplary damages in the sum of \$20,000.00.
145. The Defendant to pay the Claimant prescribed costs in the sum of \$34,455.00.

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**Margaret Y Mohammed**  
**Judge**