

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Port of Spain**

**Claim No. 2015 03439**

**BETWEEN**

**JOEL WALKER**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

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

**Date of delivery: December 7, 2018**

**APPEARANCES:**

Mr. Matthew Gayle instructed by Mr. Bryan Mc Cutcheon Attorneys at law for the Claimant.

Ms. Coreen Findlay instructed by Ms. Laura Persad Attorneys at law for the Defendant.

## REASONS

1. On the 9 March 2018 I granted judgment for the Claimant for damages for malicious prosecution; wrongful arrest on the 25 day of August, 2011; wrongful imprisonment between the 25 day of August, 2011 and the 28 day of August, 2011 inclusive at the San Juan Police Station; wrongful imprisonment between the 28 day of August and the 19 day of October, 2011, inclusive at the Golden Grove Maximum Security Prison, Arouca; and aggravated damages.
2. I ordered the Defendant to pay to the Claimant general damages in the sum of \$220,000.00 with interest thereon at the rate of 2.5% per annum from the 16 day of October, 2015 to the 9 day of March, 2018.
3. I did not make any award for exemplary damages. I also ordered the Defendant do pay to the Claimant prescribed costs in the sum of \$43,980.00.
4. The Defendant has appealed the order on damages and I now set out my reasons for making the award of damages.

## **COMPENSATORY DAMAGES**

5. 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>1</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

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<sup>1</sup> Livingstone v Raywards Coal Co. (1880) 5 App.Cas.25 at 39

State. General damages for false imprisonment are assessed under the heads of “injury to liberty” and “injury to feelings.”

6. Apart from pecuniary loss, the relevant heads of damages<sup>2</sup> for the tort of malicious prosecution are as follows:

- (i) injury to reputation: to character, standing and fame;
- (ii) injury to feelings: for indignity, disgrace and humiliation caused and suffered;
- (iii) deprivation of liberty: by reason of arrest, detention and/or imprisonment.

7. In addition, aggravating factors that can justify an uplift in the form of an award for aggravated damages are to be considered. In **Bernard v Quashie**<sup>3</sup>, it was held that a single figure is awarded for all heads of compensatory damage, including aggravated damages.

8. Lord Woolf MR in **Thompson v Commissioner of Police of the Metropolis**<sup>4</sup> 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 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.”

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<sup>2</sup> Mc Gregor on Damages, 17<sup>th</sup> Ed., 2003, paras. 38-004 to 38-005

<sup>3</sup> Civ App. No. 159 of 1992, at page 9

<sup>4</sup> [1998] QB 498

9. In **Terrance Calix v the Attorney General of Trinidad and Tobago**<sup>5</sup> the Privy Council stated at paragraph 23 that:

“The respondent did not seek to uphold the Court of Appeal’s conclusion that the grant of bail was a judicial act which became the cause of the appellant’s detention. A claimant’s failure to take up a grant of bail (which is the avowed basis on which the appellant should not recover compensation for loss of liberty) is not a “judicial act”. **In any event, although a judicial act precludes liability in false imprisonment, it does not relieve the prosecutor of liability in malicious prosecution: the prosecutor remains liable for the damage caused by his setting the prosecution in motion**- see *Lock v Ashton* (1848) 12 QB 871 (116 ER 1097). For the reasons given above in relation to the judge’s error in concluding that the appellant would have obtained bail, the Court of Appeal’s second conclusion viz that it was the appellant’s failure to apply for a variation of his bail conditions which endangered his liberty is also erroneous.**The Board has therefore concluded that the appellant was entitled to recover compensation for his loss of liberty.**”  
(Emphasis added)

10. The Court must be mindful not to overcompensate a Claimant where there is an overlap in damages for claims both in false imprisonment and malicious prosecution.
11. It was submitted on behalf of the Claimant that the starting point of any award the Court should make is \$225,000.00. Counsel argued that the Claimant was in custody for 56 days; the Claimant had one previous conviction in 2003 but he was charged under the Anti-Gang legislation

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<sup>5</sup> [2013] UKPC 15

which is a most serious matter, and which attached a very negative stigma to the Claimant which still remained with him. Further the Claimant's evidence that Corporal De Jean had a vendetta against him was unchallenged as the said Corporal De Jean, the arresting police officers did not give evidence.

12. Counsel for the Defendant argued that a reasonable award for damages is \$150,000.00. Counsel submitted that the Claimant had one previous conviction; the damages in malicious prosecution and false imprisonment matters overlap and the Court should be careful to not over compensate; and the Claimant's evidence of any vendetta by Corporal de Jean against him was hearsay.
13. The Claimant's period of detention was 56 days (i.e. 25 August 2011 to 19 October 2011).
14. There was no evidence in the Claimant's witness statement that his reputation had been harmed. The Claimant was not cross examined on injury, if any to his reputation.
15. The Claimant did not provide any evidence that he was of sound character and reputation prior to his arrest in this matter and that he experienced mental distress from the actions of the Defendant. Therefore, there was no evidence for the Court to make a finding under this head.
16. The Claimant also testified that on the 25 August, 2011 he was handcuffed by Jason De Jean. His right hand was handcuffed to another person's (Mario Clarke) left hand. While he was handcuffed to Mario Clarke, he picked up his birdcage in his left hand. On that day he had with him a "chickichong bullfinch". Corporal de Jean told him that he was going to the

station and that he could not bring the bird with him, so he gave the birdcage to Stephen Riberio and asked him to carry it for his partner to keep.

17. The Claimant also testified that he was taken to the San Juan Police station in the trunk of a police jeep. On arriving at the Police Station, a police officer escorted him directly into the station and into a police cell. He remained in this cell with Mario Clarke and others until the 28 August 2011, when a police officer took him to the room adjacent to the cells and took his finger prints. He was out of the cell for approximately five to ten minutes. Sometime after his finger prints were taken, he was handed a Notice to Prisoner by a male police officer. During the time that he was in the police cell, he did not speak to Jason De Jean, nor did he speak to him at any time on the 25 August 2011 nor at any time did Jason De Jean show him his Police Identification card.
18. The Claimant stated that at no time on the 25 August 2011 nor at any other time did Corporal de Jean state to him that he had information that he was a member of a gang and operating out of the Pamberi Panyard or any words to that effect. He said that during the time that he was held in police custody, he was not questioned at all by Corporal de Jean or any other police officer, whether in relation to gang related offences or any other offences.
19. According to the Claimant, on the 29 August 2011, he was taken, along with Mario Clarke, to the Port-of-Spain Magistrates' Court. After the hearing in the Magistrates' Court he was taken to Golden Grove Prison, in Arouca.

20. At paragraphs 41 to 59 of the Claimant's witness statement the Claimant set out a detailed description of his treatment and the conditions at the Golden Grove Prison which he endured while on remand.
21. The Claimant testified that at Golden Grove Prison he was taken to an area and instructed to strip down. He was totally naked, and his clothes were handed to a prison guard who then proceeded to search them. He was instructed by the same prison guard to squat, and while squatting, cough. His clothes were then thrown at him.
22. The Claimant stated that he was then instructed to get into a transport vehicle and was driven to an area in the prison known by the prisoners as 'Guantanamo Bay'. On arrival at Guantanamo Bay he was again instructed to strip down naked by another Prison Guard and told to squat and cough. This time all the Prison Guards were wearing black masks which wholly covered their faces, and body armour. Most of the Prison Guards in the area were armed with batons and shields. There were approximately five officers that he could see at this time and 10 prisoners who arrived at the same time as him.
23. He was assigned to cell D1-4, which was on the ground floor, and he was escorted there by two Prison Officers. One of those officers was the Welfare Officer. He was taken to this cell with Mario Clarke and two other persons whom he did not know, who had arrived from the Port-of-Spain Magistrates' Court together with him on that day.
24. The Claimant described Cell D1-4 as approximately 6ft wide and 9ft in length. It is on the ground floor. In the cell there was one double-decker bed. A Prison Officer provided them with four mattresses. Other than the mattress and bed there was nothing in the cell. At the time of his arrival

they were the only persons in cell D1-4 but over the course of the following week, three further persons were also assigned to the cell. In total there were seven persons in the cell.

25. The Claimant testified that because he suffered from asthma, he slept on the mattress on the floor nearest to the gate for the time he was in cell D1-4.
26. The Claimant described his daily routine while at Golden Grove as: at approximately 9am, the cell door would be unlocked by a Prison Officer for “morning diet”. On the opening of the cells, he entered a large corridor area and was dished food and tea by other prisoners. Breakfast consisted of bread, sausage or egg, depending on the day. However, as a Rastafarian, he does not eat any meat products, so the only available breakfast for him was bread.
27. According to the Claimant, after breakfast, he, along with other persons from D1 block, were able to use the shower and toilets which are out in the open in the airing yard. The Claimant described the airing yard as a largish area outside, which is covered with a thick metal cage. The showers were pipes suspended from the cage which was completely open for everyone to see any person showering. There was also no privacy for people using the toilets as they were directly behind the showers and to use them a person had to carry a bucket to flush it.
28. The Claimant also testified that the time for showering was also the only time that he was allowed to wash his clothes and sheets, which were brought by visitors.



29. The Claimant stated that he was permitted out of his cell in the morning for approximately 30 minutes, including the time for breakfast. He then returned to his cell at which time it was locked by a Prison Guard. At approximately 11am, again, the cell was opened by a Prison Guard and he would exit to go and collect lunch. Having collected the lunch, he then returned to the cell to eat it. The cells were then locked by a Prison Guard. The Claimant stated that because he did not eat meat products, the only available food for him during lunchtimes was peas of various varieties including red beans, dried peas, black eyed peas, lentil peas and split peas.
30. According to the Claimant, at approximately 3pm, a Prison Guard again opened the cell and he would go and collect his 'evening diet'. The only available food for him during this meal time, for the duration of his time in prison was bread. On collection of this evening meal, he then returned to the cells which were locked by a Prison Guard and were not opened again until it was time for "morning diet".
31. The Claimant described that there was no toilet or sink in the cell. If someone wanted to use the toilet during the times when he and the other persons were confined to the cell, they had to do this in the cell itself. He also stated that amongst the seven persons in the cell they shared what they called a 'pee-cup', this was a small to medium sized plastic drink bottle, with the top cut off, which they would urinate into. They then poured the urine out of the cell into a drain in the corridor which ran outside of the cell. If someone needed to defecate, they did this inside a plastic bag or newspaper in the cell. This bag or newspaper was then thrown into the area outside of the cell.
32. The Claimant said that his mattress in his cell got dirty when prisoners washed the area outside his cell. According to the Claimant, in the night

he saw plenty roaches in the cell. He also saw rats in the corridors which he chased off, and he had to be careful not to be bitten by them. He said that the cell smelt of ammonia particularly in the morning time.

33. According to the Claimant, during the course of the day the prison was hot and at night it was very cold. During his mother's first visit to him which was in his first week in the Prison, he asked her to bring a blanket for him because it was so cold at night. He was allowed only 2 visits per week.
34. The Claimant also stated that in the month of October there was a serious flood in Guantanamo Bay. For about 2 days he remained in the flooded cell. His mattress was soaked through and the water was about 4 inches deep in his cell. During this time, the bags and newspapers and their contents were floating in the water in the cell and corridor outside. Because of the flooding there, food and other items, such as toilet paper and toothpaste were spoilt. During the time of the flooding the smell became even worse and there were a lot of mosquitoes in the cells. He said that he was afraid that he was going to die in the cell at the time because the water just kept increasing and the Prison Guards were not telling him what was going on.
35. The Claimant testified that after about two days in the flooded cell he was relocated to B2-3. There were about five persons in B2-3. While in B2-3 he observed one Prison Officer beating a prisoner badly which made him afraid for his own safety. Shortly after this, on the 19 October 2011, the Claimant was taken to the Magistrates' Court in Port-of-Spain when the matter was dismissed against him.
36. In cross examination, the Claimant's evidence in chief on the conditions he was kept in during the period of custody was not challenged.

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

**(a) Gerald Rampersad v The Attorney General of Trinidad and Tobago<sup>6</sup>**

The claimant was charged with possession of marijuana for the purpose of trafficking contrary to the Dangerous Drugs Act. He was denied bail and spent **7 days** at the Golden Grove Prison. The Court found that the charges were concocted and fabricated and awarded.

General damages in the sum of \$160,000.00 and \$5000.00 in exemplary damages.

**(b) Onnell Dyer v The Attorney General of Trinidad and Tobago<sup>7</sup>**

The Claimant was charged on 29 August 2011 with the offence of being a member of a gang on 25 August 2011 contrary to section 5 (1) (a) of the Anti-Gang Act, No. 10 of 2011 (“the Anti-Gang Act”). On 29 September 2011, those proceedings against Mr. Dyer were discontinued for insufficient evidence.

Mr. Dyer remained in custody for **34 days**. However, his evidence in relation to damages was meagre. In the circumstances, the Claimant was awarded the sum of \$40,000.00 in general damages.

**(c) Marvin Pascall v The Attorney General of Trinidad and Tobago<sup>8</sup>**

The Claimants, Marvin Pascall and Reiba Rodriguez, were arrested on 26 August 2011 and subsequently charged for the

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<sup>6</sup> Claim No. CV2009-04698 Delivered 21 July, 2014

<sup>7</sup> Claim No. CV2015-03207 Delivered on 20 September, 2017

<sup>8</sup> Claim No. CV2015-03142 Delivered on 20 September, 2017

offence of being members of a gang contrary to Section 5 (1) (a) of the Anti-Gang Act. They spent a total of **25 days** in custody. The Claimants were maliciously prosecuted on a fabricated robbery charge. They contended that there were kept in a small over crowded cell which had a hole for a toilet. The Court awarded the sum of \$70,000.00 in general damages inclusive of aggravated damages and \$20,000.00 in exemplary damages.

**(d) Mark Huggins v The Attorney General of Trinidad and Tobago<sup>9</sup>**

The Claimant was arrested and detained and subsequently charged for being a gang member under the Anti-Gang Act contrary to section 5 (1) (a). He was detained for **36 days and 3 ½ hours**. He was housed in a cell about 10 ft x 10 ft with seven other men while at the Remand Yard Prison with only a bucket for a toilet. He was awarded \$225,000.00 in general damages and \$30,000.00 in exemplary damages.

38. Based on the judicial trends the range appeared to be between \$100,000.00 to \$250,000.00. Taking into account the circumstances in this matter, in particular, the length the Claimant was detained and the conditions in which he was detained I was of the opinion that an adequate award for general damages which sum included an uplift for aggravation is the sum of \$220,000.00. I therefore awarded the Claimant the sum of \$220,000.00 as general damages including an uplift for aggravating factors.

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

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<sup>9</sup> Claim No. CV2015-03208 Delivered on 29 January, 2018