

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2016-00034

BETWEEN

**BRYAN BARRINGTON also called
BARRY BARRINGTON**

Claimant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Defendant

Before the Honourable Madam Justice Margaret Y Mohammed

Dated the 29th June, 2017

APPEARANCES

Mr. Abdal Ashraph-Baksh and Zeik Ashraph Attorney at law for the Claimant.

Ms. Tamara Toolsie and Ms. Ronnelle Hinds instructed by Ms. Kadine Matthew Attorneys at law for the Defendant.

JUDGMENT

1. On the 26th January 2012 (“the day of the incident”) whilst police officers were executing a search warrant at the Claimant’s home situate at No 20 Partap Trace Oropouche the Claimant was bitten on his penis by a police dog named Tango (“Tango”). The Claimant has instituted the instant action seeking damages for personal injuries and consequential

loss caused by the negligence of the Defendant by his servants and/or agents, interests, costs and such further or other relief.

2. The Claimant's case was that on or about 6:15 am on the day of the incident approximately ten police officers entered his home bearing a search warrant for arms and ammunition. The Claimant was informed that the police officers were attached to the San Fernando Police Station and amongst the officers was Tango which was accompanied by a police dog handler.
3. During the execution of the search warrant the police officers had cause to arrest the Claimant and handcuff him behind his back. The Claimant was only clothed in an underwear namely a cotton boxer brief. The police dog handler released Tango from its restraints and allowed it to roam freely throughout the Claimant's home and while Tango was not restrained he bit the Claimant on his penis. Therefore it took the police dog handler approximately three minutes to pry Tango's jaw from the Claimant's penis and to restrain it.
4. The particulars of negligence pleaded by the Claimant were that the police dog handler:
 - (a) Failed and/or neglected to secure a dangerous species of animal;
 - (b) Failed and/or neglected to prevent a dangerous species of animal from attacking the Claimant;
 - (c) Failed and/or neglected to prevent a dangerous species of animal from causing severe injury to the Claimant;
 - (d) Fail and/or neglected to stop the dangerous species of animal from attacking the Claimant within a reasonable time; and
 - (e) Fail and/or neglected to adequately or in any way control the animal.
5. As a result of the said bite the Claimant pleaded that he suffered the following injuries; superficial laceration 3 cm to half of the penis and laceration to the penis secondary to dog bite. The Claimant received treatment at the San Fernando General Hospital on the day of

the incident and for approximately nine months afterwards the Claimant further suffered the following:

- (a) Inability to have sexual intercourse;
- (b) Severe and continuous pain;
- (c) Continuous discomfort;
- (d) Reopening of the wounds whenever penis became erect;
- (e) Shame and embarrassment.

6. The Claimant averred that he still suffers from severe pain whenever his penis is erect and discomfort during sexual intercourse. He also pleaded that he was unable to manage his business which made approximately \$4,000.00 every weekend and six months thereafter he was forced to close it permanently.

7. The Defendant denied each of the particulars of negligence. The Defendant averred that his servants and or agents did not breach the duty of care owed to the Claimant that resulted in the Claimant's injuries. The Defendant also contended that the injuries sustained by the Claimant and any loss and/or damage suffered as a result of the Claimant's injuries were wholly due and caused by the Claimant's own negligence during the search of his home.

8. The Defendant pleaded that on the day of the incident at approximately 6.35 am, Senior Superintendent Nanan, and a party of officers, comprising officers from the Southern Division Task Force, the Anti-Kidnapping Unit and the Canine Branch arrived at the Claimant's home to execute a search warrant for arms and ammunition. Some of the officers present included: Ag Insp. Thomas, Ag Sgt. Branch No. 12291, PC Mohammed No. 16616, PC Ramlogan No. 16588, PC Kalloo No.16328 PC Williams No.14615, PC Melville No. 14528 and PC George No.13815. The officers of the Canine Branch were accompanied by two (2) trained tactical narcotics dogs, one of which was Tango.

9. Upon arrival at the premises, PC Kalloo accompanied by other officers including Ag. Sgt. Branch and PC Williams were permitted entry to the Claimant's home. The

Claimant was in boxer shorts and he was bareback at the time of the police officers' arrival. PC Kalloo identified himself as a police officer by use of his Trinidad and Tobago Police Identification Card, he introduced the other police officers present and read and he showed the search warrant to the Claimant.

10. PC Kalloo and the other police officers secured the Claimant's home and invited the Claimant and his family members present to sit in the living room. PC Kalloo then invited PC Mohammed, the dog handler and Tango, to enter the Claimant's home. PC Mohammed held Tango on a leash which was attached to a correction collar/check chain. The leash was approximately 4 feet long and it had a loop at the end, which PC Mohammed held in his hand. Tango was not allowed to roam freely throughout the Claimant's home since he was controlled by PC Mohammed.
11. Upon arriving at the doorway of the Claimant's home, PC Kalloo introduced PC Mohammed to the Claimant and his family. At this time the Claimant's wife Ms Nadia Baboolal, her daughter and a baby were sitting in the living room, whilst the Claimant was standing in the same area accompanied by police officers. PC Mohammed indicated to the Claimant, his intention to search to the home and explained to him the manner in which the search would be conducted. PC Mohammed specifically warned the family that Tango had been trained to secure its handler and that the occupants should not approach or make any aggressive or sudden actions toward him as the handler, since Tango would view this as a sign of aggression and react as he was trained to.
12. Upon Tango entering the living room the Claimant, his wife and his daughter carried on in a loud, rowdy and aggressive manner, protesting about the dog being in the home and threatening the police officers present.
13. In response to the behaviour displayed by the Claimant and his family, PC Mohammed reminded them that Tango was a tactical dog, which was trained to react to aggression. Despite being warned about their behaviour, the Claimant and his family, at various

times during the search, continued to behave in a loud and aggressive manner, shouting at the police officers, stomping their feet and making physical gestures with their hands.

14. In the course of the search, PC Mohammed and Tango uncovered quantities of plant like material resembling marijuana, as well as an apparatus used to crush marijuana. PC Kalloo informed the Claimant and his wife of the findings, and cautioned and arrested them. The Claimant was handcuffed at this point in time.
15. After handcuffing the Claimant, the search of the Claimant's home progressed to the master bedroom (“the bedroom”) at the rear of the home. The Claimant was asked to accompany the police officers to the bedroom. However, due to its small size and congested nature only PC Mohammed and Tango entered the bedroom and continued the search. The Claimant, accompanied by PC Kalloo and another officer, stood at the doorway of the bedroom to observe the search.
16. In the course of the search, the Claimant again, in a loud aggressive manner, hurled abuses toward PC Mohammed and other officers, protesting against Tango being in the bedroom. The Claimant’s wife at that time also made loud remarks of a similar nature from the living room area. On nearing completion of the search, and while PC Mohammed and Tango were searching in the vicinity of the wardrobe in the bedroom, the Claimant advanced toward PC Mohammed in an irate manner and came in close proximity to Tango.
17. As a result of the Claimant’s action in entering the bedroom and advancing toward PC Mohammed, the latter attempted to direct Tango to stand behind him. However, Tango proceeded to grip the Claimant in the vicinity of his crotch. Upon seeing this, PC Mohammed immediately jerked on Tango’s correction collar and commanded him 3-4 times to ‘out’ which was a command to let go. After the commands, Tango released its grip of the Claimant after approximately 30-40 seconds. The search of the Claimant’s home was immediately abandoned and the Claimant was taken to the San Fernando General Hospital to seek medical attention.

18. At the Pre-Trial Review, the Court directed the parties to file and serve witness statements on the issue of liability with the trial of the matter proceeding solely on that issue. At the trial the Claimant and his wife Ms Nadia Baboolal gave evidence on his behalf. The witnesses for the Defendant were the police dog handler PC Rasheed Mohammed and PC Faraz Kalloo.
19. The issues that arise for determination are:
- a. Whether the Defendant by his agents and/or servants was negligent in handling Tango so as to cause injury to the Claimant;
 - b. Whether the injury sustained by the Claimant was on account of his own negligence.

Whether the Defendant by his agents and/or servants was negligent in handling Tango so as to cause injury to the Claimant

20. **Charlesworth & Percy on Negligence**¹ describes negligence as:
- “Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do: or doing something which a prudent and reasonable man would not do.”*
21. **Halsbury’s Laws of England**² state that proving negligence by the Claimant:
- “... involves the proof of some duty owed by the defendant to the claimant, some breach of that duty, and an injury to the claimant between which and the breach of duty a causal connection must be established”.*
22. The burden of proving negligence is on the Claimant who must show that he was injured by a negligent act or omission for which the Defendant is in law responsible. A person may be liable for an attack by an animal under common law scienter or if he is found to be negligent. In the instant case, common law scienter was not pleaded, however the distinction between scienter

¹ (12th edition) at paragraph 7-02, page 461

² Volume 78 (2010) para 62

and negligence was set out by Kokaram J in the case of **Diane Drayne Quamina v Anthony Cherry & Anor**³ where he stated:

*“The inquiry in negligence is therefore different. Unlike the scienter action the focus in negligence is not on the knowledge of a vicious propensity but on a risk of danger which a prudent person must guard against. Not being taken out of the category of tame animals, therefore has the Defendant put the dogs in such a position that a reasonable man will know that it was likely to cause danger and therefore ought to regard himself as under an obligation to do something by way of precaution? This test has been stated in different ways in the authorities cited. Hence the fundamental distinction between an action in negligence and scienter is that the Plaintiff need not prove knowledge of a particular propensity or knowledge of the kind of injury actually inflicted, but whether broadly speaking the type of physical harm was within the range of likely consequences. Put shortly there was a foreseeable risk that these three dogs will roam at large biting or cause damage to an adult if and when it encountered an adult. If there was a foreseeable risk the Defendants should guard against it using such skill and care as is reasonable.”*⁴ (Emphasis added)

23. It was not in dispute that:

- (a) The Defendant by the officers who conducted the search with the assistance of police dog, Tango, owed the Claimant and his family a duty of care; and
- (b) The injury sustained by the Claimant was one which was foreseeable.

24. The standard of care owed by the servants and/or agents of the Defendant in the instant case was described in **Charlesworth & Percy**⁵ on negligence as:

“There is a duty to take reasonable care to prevent damage from animals but, as a general rule there is no liability “where tame animals with no special individual mischievous propensity are lawfully let loose in the course of the ordinary use of them, and the only danger to be apprehended is from contact with other animals in places

³ HCA No. S-556 of 1995

⁴ Supra para 6.2

⁵ (12th ed.) at paragraph 14-87

where they may all lawfully be.” The rule is the same as regards danger to human beings. What is reasonable care depends essentially on the nature and habits of the kind of animal concerned, the circumstances of the case and the usual practice of mankind in dealing with that kind of animal. So, by way of example, a high standard care must be required of those, such as the police, who use dogs for security purposes. The facts of a case may show that the owner of an animal should have known that it was likely to cause damage, and taken reasonable steps to prevent it. If he has failed to do so, and damage has resulted, liability may well follow.

“The root of this liability is negligence, and what is negligence depends on the facts with which you have to deal...” If the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions.”

Lord MacMillan added:

“In each case the question is whether there is any evidence of such carelessness in fact as amounts to negligence in law – that is, to breach of the duty to take care. To fulfil this duty the user of the road is not bound to guard against every conceivable eventuality but only against such eventualities as a reasonable man ought to foresee as being within the ordinary range of human experience.” (Emphasis added)

25. In this jurisdiction in **Balliram Ramdeen and Bisnath Singh v The Attorney General**⁶ Jamadar J (as he then was) described the standard of care to be exercised by a police officer as:-

“...The duty of care required in each case depends on the particular circumstances existing at the time. It is trite law that the standard of care is that of the reasonable man, that is of a person using ordinary care and skill... . A person who holds a particular skill is required to show the skill normally possessed by persons doing that kind of work...In my opinion, there is no reason why this principle should not apply to police officers acting in the discharge of their duty...In my opinion, the test to be applied

⁶ HCA No 807 of 1995

in this case is that of the ordinary trained police officer exercising that special training in the carrying out of his duties...”.

26. It was argued on behalf of the Claimant that the police officers involved in the search breached the duty of care to the Claimant by not restraining Tango by a leash in the Claimant’s home and in particular in the bedroom where the Claimant was bitten; by not maintaining absolute control of the Claimant in particular after he was handcuffed and when he was in the bedroom; and by failing to substitute the Claimant with his wife for the search of the bedroom.
27. It was submitted on behalf of the Defendant that its servants/and or agents involved in the search of the Claimant’s home exercised reasonable care firstly, by informing the Claimant of the nature of Tango which was part of the search team and by warning of the precautions to be observed in light of the search by and presence of Tango, secondly, by keeping control of Tango by the use of a leash and a series of verbal commands and thirdly, in positioning the Claimant to stand at the doorway of his bedroom where he could observe the search of the bedroom at a safe distance away from Tango.
28. In order to determine if the police officers breached their duty of care, the Court’s finding on the following disputes of facts are critical:
 - (a) Did the police officers warn the Claimant and his family about precautions to be observed in the presence of Tango?
 - (b) Was Tango was held on a leash or other restraint for the duration of the search of the living room/dining room/kitchen?
 - (c) Did the police officers exercise reasonable care in relation to the Claimant and Tango in the search of the bedroom?
29. Where there are different version of events as in the instant case the Court is guided by the learning in **Winston McClaren v Daniel Dickey and ors**⁷ Rajnauth–Lee J (as she then was) where it was stated that:

⁷ CV 2006-01661, unreported

“12. Where there is an acute conflict of evidence, the Judicial Committee of the Privy Council has laid down the following principles in the case of **Horace Reid v Dowling Charles and Percival Bain** Privy Council App. No. 36 of 1987. At page 6, Lord Ackner delivering the judgment of the Board examined the approach of the trial judge”:

“Mr James Guthrie, in his able submissions on behalf of Mr Reid, emphasized to their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”

13. Accordingly, the trial judge must check the impression that the evidence of the witnesses makes upon him against

- (i) contemporary documents, where they exist;
- (ii) the pleaded case; and
- (iii) the inherent probability of improbability of the rival contentions.”

(Emphasis mine)

Did the police officers warn the Claimant and his family about precautions to be observed in the presence of Tango?

30. The Claimant’s evidence in his witness statement was that none of the police officers told him or his family anything about the dog which was going to search the house nor were they warned about the dog’s behaviour. At first in cross-examination the Claimant stated that he was not

told that a dog was participating in the search of his house but later he contradicted himself when he admitted that he was told by the police officers that a dog was going to participate in the search of the house. The Claimant also admitted that PC Mohammed identified himself as the dog handler and PC Mohammed informed him that he was about to search the house with a tactical dog. The Claimant further admitted that PC Mohammed warned of certain precautions which he and his family were to observe throughout the search when Tango was present. Yet later in his cross-examination the Claimant denied that PC Mohammed expressly told him and his family about Tango's training and cautioned them against aggressive or sudden acts towards Tango or PC Mohammed. He also denied that PC Mohammed repeated words of caution to him and his family at various points in the search.

31. In light of the material inconsistencies in the Claimant's evidence I formed the view that the Claimant was not being truthful that neither he nor his family were given certain warnings before Tango was brought to search the house. In my opinion, the Claimant's admissions in cross-examination revealed the truth which was that the Claimant and his family were advised that a tactical dog Tango was being brought to conduct a search of the house and they were advised how to conduct themselves in the presence of Tango.
32. Ms Baboolal's evidence in her witness statement was silent on any precautions about Tango. In cross-examination, Ms Baboolal could not recall if she was told that a dog was going to take part in the search prior to the dog appearing at the front door. She did not recall if PC Mohammed informed her that a tactical dog was about to search the house and if PC Mohammed warned her of any precautions to observe while the search was being done by the dog. I attached little weight to Ms Baboolal's evidence since her evidence in chief was deliberately silent on any precautions which were given and she was uncertain if there were any precautions.
33. On the other hand, both of the Defendants witnesses were clear, that the Claimant and his family had been warned about the training of Tango to secure the handler, PC Mohammed and they were informed of the precautions to be observed in the course of the search to avoid any risk of attack by Tango.

34. PC Mohammed was the handler for Tango for the past 8 years. According to PC Mohammed's witness statement, as a tactical narcotics dog, Tango was trained to find narcotics, to track persons, to conduct building and environmental searches, to undertake crowd control and in handler protection, with aggression where needed. Tango was also trained to attack on command or if a threat is perceived to the dog handler. As part of the training, Tango had been taught to respond to various verbal commands. As a police canine handler PC Mohammed was also taught to employ various corrective actions with Tango and he had found Tango to be generally calm in temperament and not to be prone to aggression, other than when operating in accordance with his training.
35. PC Mohammed's evidence at paragraph 9 of his witness statement was that prior to commencing the search of the Claimant's home, he informed the Claimant and his family that he was about to search the home with a tactical dog and he warned them against approaching him or making any sudden actions toward him as the handler of the dog, since Tango would view this as a sign of aggression and would react as he was trained to do.
36. This evidence was corroborated by PC Kalloo at paragraph 8 of his witness statement who recalled hearing PC Mohammed informing the Claimant and his family of the dog's training to secure his handler and the warning against aggressive or sudden actions toward PC Mohammed as the handler. PC Kalloo in his evidence, went further to indicate that he had heard PC Mohammed indicate to the Claimant and his family the procedure to adopt if at any point of the search, they wished to get his attention.
37. At paragraph 12 of his witness statement, PC Mohammed gave evidence that in the course of the search, and shortly after what appeared to be a quantity of marijuana was located under the keyboard in the living room, the Claimant and his family began shouting, stamping their feet and making physical gestures with their hands, in a manner which caused him to repeat his warning that the Claimant and his family ought to be calm and not approach him while searching, in order to guard against Tango reacting in a protective manner. PC Mohammed gave evidence that despite this warning, the Claimant and his family persisted in verbal abuse

of the police officers present and continued to conduct themselves in a loud and aggressive manner.

38. Paragraphs 9 and 11 of PC Kalloo's witness statement corroborated PC Mohammed's version of events and added that on at least two (2) identified occasions, he spoke to the Claimant and his family, requesting that they remain calm to facilitate the execution of the search.
39. In cross-examination, PC Mohammed confirmed that he had conducted several searches with Tango during the course of the years they worked together. He was the only person authorized to handle Tango and he was not a qualified dog trainer. He stated that Tango was trained as a search and guard dog and that it was common for tactically trained dogs to be trained in both. Tango was also trained to search for narcotics and to do crowd control. By crowd control he meant that Tango was trained to suppress rude people and to contain a crowd but Tango had not been so deployed. Tango was also trained to guard its handler, namely PC Mohammed from any form of aggression which it perceived as a threat by biting. PC Mohammed admitted that if the need arose and if Tango was commanded to or if it perceived a threat, Tango would bite and there are circumstances when Tango would be commanded to bite.
40. I found PC Mohammed to be a witness of truth since his evidence in his witness statement and in cross-examination on this matter was clear and consistent. In my opinion PC Mohammed advised the Claimant and his family of the precautions which they should followed while Tango was searching the house.
41. PC Kalloo's evidence in cross-examination was that he directed the Claimant, his wife and child to sit down in the living room and that the Claimant and his family were sitting before the dog and the dog handler came into the house. Yet during certain intervals the Claimant was standing during the search. He stated that PC Mohammed was responsible for controlling Tango and no other officer was allowed to do so. He also confirmed that when PC Mohammed and Tango arrived in the house the Claimant and his family started to protest.

42. I accepted that PC Kalloo was also being a witness of truth on his evidence that the Claimant and his family were told how they should or should not conduct themselves while Tango was searching the house. In my view his evidence on this matter was unshaken in cross-examination.
43. It is submitted on behalf of the Claimant that the training of Tango to attack was sufficient to demonstrate a special circumstance or risk of injury. It was also argued that Tango was capable of acting on its own perceptions without the knowledge, command or consent of its handler and that this further demonstrated a special circumstance or risk of injury that would have prevailed on PC Mohammed to exercise even more care. In this regard Counsel for the Claimant referred to paragraph 18 of the PC Mohammed's witness statement which stated that in his years of experience with Tango he has noticed that Tango does not normally let go right away when directed "out". PC Mohammed confirmed this in cross-examination. It was the Claimant's contention that this was evidence of the unpredictability of Tango and further demonstrated a special circumstance or risk of injury that would have prevailed on PC Mohammed to exercise more care.
44. I accept that there were special circumstances or risk of injury associated with the presence of Tango during the search of the Claimant's house but in my opinion the weight of the evidence supports the Defendant's assertion that his servants and/or agents namely PCs Mohammed and Kalloo took the commensurate care and special precautions associated with such risks by advising the Claimant and his family of the nature of Tango as a tactical dog, they were warned specifically of the precautions to be observed in the course of the search due to Tango's training as a tactical dog and how they should and should not conduct themselves when Tango was present.
45. Therefore the servants and/or agents of the Defendants exercised a reasonable duty of care to the Claimant and his family by warning them, initially at the commencement of the search, and repeatedly throughout the search, of the precautions to be observed in light of Tango's presence in the home.

Was Tango held on a leash or other restraint for the duration of the search of the living room/dining room/kitchen?

46. Both the Claimant and his wife Ms Baboolal gave evidence that this was the first time that a police dog had been in their home and that the police dog Tango ‘roamed freely’ throughout the living room, dining room and kitchen. The Claimant’s evidence in his witness statement was that after the police officer told him and his family to sit in the living room a police dog, held by the collar by another police officer, was brought to the front door. He stated that the dog was not on a leash or on any other restraint and that other police officers told the Claimant and his family that the man holding the dog was the dog’s handler. He then stated that the police dog was let lose in the house to roam freely and the police dog handler entered behind it. He added that while the dog was roaming freely, throughout the living room, dining area and kitchen the dog handler stood in one place in the living room. The Claimant stated that he and his wife initially protested against the presence of the dog since it was against his religion as a Muslim to have a dog walk in areas where they prayed, they had a three-month old baby with them and they were afraid of the dog. The Claimant stated he asked the police officers how they were going to hold the dog if it attacked the baby and the police officers told him not to worry since the dog was trained.
47. However the Claimant contradicted his evidence in cross-examination. He admitted that he could not recall when he first saw Tango at the front door if it was on a leash and if it was let off the leash after. When Counsel for the Defendant questioned the Claimant whether he observed PC Mohammed entering with the dog to be standing up straight or bending to his side, the latter being an observation which would be consistent with the Claimant’s evidence that the dog was held by its collar, the Claimant indicated that he could not recall. When the Claimant was shown paragraph 5 of his witness statement, he maintained that the dog was ‘*brought on a leash, then let go*’. Counsel for the Defendant put to the Claimant that in his 2012 statement to the police about the incident, which was made 5 days after the incident, he had included information about the dog’s collar in the statement but he did not mention anything in his witness statement about the strap or the collar. He acknowledged the difference.

48. In my opinion the aforesaid several contradictions in material aspects of the Claimant's evidence on the issue of whether Tango was held on a leash during the search diminished the credibility of his evidence that Tango was allowed to roam freely in the house.
49. Ms Baboolal's evidence in her witness statement was similar to the Claimant's evidence in chief. Ms Baboolal denied that that PC Mohammed held Tango on a leash which was attached to a collar. She also denied that Tango was not allowed to roam freely throughout the Claimant's home and he was controlled by his handler. According to her witness statement the police officer was holding Tango by his collar when he was brought to the house and Tango was not on any leash or any other restraint. She stated that the police officer who was handling Tango released it by the front door and allowed it to roam freely throughout the house.
50. However, Ms Baboolal's clarity of recall in cross-examination was very limited. She was able to recall that this was the first time a dog was part of a police search of her home. Yet she was not able to recall if PC Mohammed was standing up straight or if he was bending to his side when he brought Tango to the front of the house. She also denied that Tango was on a leash when it was brought to the front of the house by she confirmed that she protested by asking why the dog was not on a leash. In my opinion it was not plausible that Ms Baboolal could not recall material events concerning the appearance of a police tactical dog which was searching her house for the first time and for this reason I found her evidence not to be credible.
51. There were also several differences between the evidence of the Claimant and Ms Baboolal on the manner in which the search of the living room and kitchen progressed. According to the Claimant's evidence in cross-examination, PC Mohammed stood in the middle of the living room while Tango started sniffing by the door, then moved sequentially to the chairs, dining table, refrigerator and kitchen area. He admitted that although Tango was roaming freely the dog did not approach him while he was sitting in the living room and that he did not see the dog approach his family who were also seated in the living room. When questioned as to what occurred after the dog finished searching the kitchen and living room, the Claimant indicated that '*they (the handler, the officer by the door and the dog) went to search our bedroom.*' When questioned as to whether he heard the handler say anything to the dog when it had finished

searching the kitchen/living room area, the Claimant indicated that he could not recall. Further, when questioned as to whether he saw the handler hold on to the dog before moving to the bedroom, the Claimant also indicated that he could not recall.

52. Ms Baboolal in cross-examination stated that the dog searched the living room first and then the kitchen. She stated that when she was sitting in the living room the dog came up to her, her daughter and her husband yet she could not recall if at that time the dog handler was holding onto the dog's collar or if the dog was roaming freely. This contradicted the Claimant's evidence who had stated that he did not see the dog approach his family.
53. Ms Baboolal also stated in cross-examination that she heard PC Mohammed call out the dog's name "Tango" but she did not know what was said to the dog. She also could not recall if the dog handler, PC Mohammed gave Tango instructions to go into the kitchen. When asked by Counsel for the Defendant if the dog proceeded in a particular direction during the search she first said that the dog was roaming freely, then she said that the handler was holding the dog's collar then she changed to state that the dog was with the handler. This was in contrast to the Claimant's evidence which was that PC Mohammed stood in the middle of the living room while the dog roamed freely. Ms Baboolal stated that the dog on its own did not run into the bedroom and she could not recall where the dog was when the police officer informed her family that they wanted to search the bedroom.
54. In my opinion, the aforesaid inconsistencies between the Claimant and Ms Baboolal's evidence were material in demonstrating that their assertion that Tango was not restrained during the search of the house was unreliable.
55. The evidence of both witnesses for the Defendant was that Tango was on a leash throughout the search and their evidence was unshaken in cross-examination. PC Mohammed's evidence in his witness statement was that, Tango was on a leash of approximately 4 feet in length which was attached to a correction collar/check chain by a clip. According to PC Mohammed there was a loop at the end of the leash through which his hand was placed during searches. His other hand was used to 'present' – which was to direct the dog where to search. Throughout

the search of the entire house Tango remained on its leash which he kept gripped in his left hand and Tango was not allowed to roam freely around the house. PC Mohammed also stated that he commenced the search with Tango from the front door going in a clockwise direction and after searching the living room/ dining room and kitchen the bedroom was then searched.

56. In cross-examination PC Mohammed stated that he controlled where Tango went during the search of the Claimant's house. He stated that Tango did not get close to the Claimant's wife and children since the objective was to search the room and not the persons.
57. PC Kalloo's evidence in his witness statement was that when they were at the doorway to the home, in the porch, he observed that PC Mohammed had control of Tango with the use of a leash. According to PC Kalloo, during the search of the Claimant's home Tango was leashed and was being instructed by PC Mohammed with verbal commands and hand gestures to move around. He said that the dog Kalloo, Tango was attached to a leash which had a loop attached to PC Mohammed's wrist. The leash allowed the dog approximately 4 feet of movement.
58. In cross-examination PC Kalloo's evidence on this matter was unshaken since he confirmed that PC Mohammed controlled how close Tango got to the Claimant's family and that PC Mohammed instructed Tango where to go during the search.
59. The evidence of PCs Mohammed and Kalloo was also consistent with the information in the the Extract for Station Diaries for the Police Canine Branch, Caroni and the San Fernando Police Station dated 26th January, 2012, which exist as the most contemporaneous records of the day of the incident and which were tendered into evidence in this matter by consent of the parties, on the 9th December, 2016. The said extracts stated that the Claimant and his family sat in the living room whilst PC Mohammed and Tango on a leash together with PC Kalloo and another officer conducted a search of the living room and kitchen. After a quantity of marijuana under a computer keyboard was found and in an apparatus they were shown to the Claimant and Ms Baboolal and cautioned. They then started to shout, stamp their feet whilst seated and made physical gestures with their hands. PC Mohammed spoke to them informing

them to be calm and not approach him whilst he was searching since Tango could react in a protective manner. After PC Mohammed found marijuana in the refrigerator and it was shown to the Claimant he shouted verbal abuse to the police officer.

60. Counsel for the Claimant did not address in his submissions whether Tango was restrained by a leash when it was brought to the house and during the search of the living room, dining room and kitchen. His submission was on whether Tango was restrained by a leash in the bedroom which I will address later.
61. In my opinion the evidence on behalf of the Claimant on this issue was inconsistent and not credible, with the Claimant and his wife differing on several issues of fact. The Claimant's evidence that the dog was not on a leash throughout the search of his room and as such roamed freely was not plausible since his evidence was that the dog did not approach him and his family while seated in the living room and he described a methodical manner in which Tango searched the living room, dining room and kitchen area before progressing to the bedroom. Further, it was the evidence of the Claimant's wife under cross-examination, that the dog was controlled by PC Mohammed throughout the search of the living room and kitchen by holding it by its collar, but yet that the dog approached her and her family while seated in the living room.
62. I therefore concluded that the weight of the evidence supported that Tango was restrained by a leash during the search of the living/dining room and kitchen.

Did the police officers exercise reasonable care in relation to the Claimant and Tango in the search of the bedroom

63. It was not in dispute that the bedroom was small in size and there was little walking space due to furniture and other items contained therein. The bedroom was approximately 10 feet x 10 feet in size. It was very congested in that there was a lot of clothing along the left hand side of the wall. There was no space between the clothing and the bed. The bed, which appeared to be a king size bed was against the wall. There was a wardrobe along the right wall of the bedroom. However, there were three material disputes between the parties concerning the

search of the bedroom namely: the Claimant's position in the bedroom; whether Tango was restrained by PC Mohammed in the bedroom; and whether the Claimant could have been substituted as the witness for the search of the bedroom.

The Claimant's position in the bedroom

64. The Claimant's evidence at paragraph 10 of his witness statement was that he went inside the bedroom and stood at the foot of the bed, facing the bed. In cross-examination, he changed this evidence and stated that he was facing the door. When questioned about the inconsistency between his witness statement and his oral evidence, the Claimant explained that he was '*changing positions, watching the dog and watching the officer at the door, and facing the door too.*' This was the first time the Claimant stated that he was moving around in the bedroom and changing his direction since the Claimant did not state this in his Statement of Case, Amended Statement of Case or witness statement. Further in the Claimant's statement given to the police on the 1st February 2012 which was annexed as B to the Statement of Case and which was given 5 days after the incident, the Claimant stated that at the time of being bitten, he was '*close to the bedroom door*'⁸.
65. When tested under cross-examination, the Claimant was unable to recall material elements before he was bitten. The Claimant could not recall whether his legs were touching the foot of the bed where he stood, and he indicated that he did not see whether the dog lunged over the corner of the bed and toward his groin, because he was not looking at the dog at the time. When questioned what he was doing at that time, the Claimant indicated that he could not recall. When tested on his statement that he walked forward as the dog walked backward pulling on his penis, and questioned whether he walked into the bed (on the premise that he was standing at the foot of the bed when bitten), the Claimant also could not recall.
66. In **The Attorney General of Trinidad and Tobago v Anino Garcia**⁹, the Court of Appeal stated that where that there existed stark discrepancies between the Claimant's pleaded case

⁸ Page 3 of the said statement

⁹ Civ. App. No. 86 of 2011, unreported at paragraph 31

and his written and oral evidence, it entitles the Court, to question the credibility and reliability of the evidence of the party. In my opinion the inconsistencies between the Claimant's pleading, witness statement, his evidence in cross-examination and his statement of the 1st February 2012 undermined the credibility of the Claimant's evidence that he was standing at the foot of the bed facing the bed.

67. PC Mohammed's evidence was that he and Tango, entered the doorway of the bedroom and due to the small size, the Claimant stood at the entrance and the accompanying police officer stood behind him. He stated in his witness statement that on nearing completion of the search, the Claimant began stamping his feet on the floor and continued to hurl insults at him and at the other police officers. According to PC Mohammed after searching the rear of the bedroom, in light of its congested nature, he informed the police officer standing at the entrance of the bedroom that he should undertake a manual search of the bed since PC Mohammed did not want Tango to jump on the bed. PC Mohammed also informed the police officer that he wanted to carry Tango on a "break". PC Mohammed stated that by this time he was standing in the vicinity of the wardrobe in the bedroom which was on the right wall. As he turned around, he saw the Claimant facing him and behaving in an enraged manner. He stated that the Claimant had moved from his initial position at the entrance of the bedroom and he had walked approximately 2-3 feet from the doorway into the room towards him. He attempted to direct Tango to stand behind him by pulling on his leash. However, that was futile and Tango bit the Claimant in the vicinity of his crotch.

68. In cross-examination, PC Mohammed stated that he walked into the bedroom with Tango and at that time the Claimant was standing in the doorway and PC Kalloo was behind him. The Claimant was handcuffed when he was brought into the bedroom which was congested. He could not recall if the Claimant was handcuffed at the front or to the back. He stated that he did not see when the Claimant walked towards him nor could he recall hearing him walk towards him. He stated that he did not command Tango to bite and he attempted to pull Tango away and he was unsuccessful in putting Tango behind him. PC Mohammed admitted that that a bite to a man's genital area is very painful, but he was adamant that the Claimant did not scream or shout when the dog bit him in his genital area. He stated that he attempted to direct Tango to

stand behind him by pulling on his leash and in re-examination PC Mohammed stated that his attention throughout the search was primarily on Tango.

69. PC Kalloo's evidence was that after the search of the living room and kitchen was completed the search then moved to one of the bedrooms in the house. The bedroom was at the end of a short narrow corridor approximately four feet away from the living room. Due to the narrow space, Tango and PC Mohammed went into the bedroom first. The Claimant, another officer and PC Kalloo then went into the corridor to the doorway. The door to the bedroom was wide open. The Claimant stood in the doorway. PC Kalloo was slightly behind the Claimant's shoulder and the other police officer was behind him. PC Mohammed and Tango searched the bedroom in a clockwise direction. During the search of the bedroom the Claimant again began behaving aggressively stating that the dog was walking on his clothes. He again asked the Claimant to desist in his aggressive behaviour. He observed that PC Mohammed had almost completed his clockwise search of the room with Tango, and was standing in the vicinity of the wardrobe when the Claimant then stepped into the bedroom towards PC Mohammed, and in so doing stepped straight onto Tango. When he did so, Tango grabbed onto and held the Claimant's groin.
70. In cross-examination, PC Kalloo changed his evidence from the Claimant stepping on Tango and instead he stated that the Claimant stepped forward towards Tango and that PC Mohammed was behind Tango. He stated that when the Claimant stepped away he ordered him to come back. He did not recall hearing PC Mohammed instruct Tango to bite. He recalled that Tango held on for about 20 seconds and it released after the third command. He could not recall if the Claimant pushed Tango away or if PC Mohammed attempted to pry open Tango's mouth.
71. The Station Diary Extract for the Police Canine Branch Caroni Station for the 26th January 2012 stated that *"Mr Barrington was led by police officer present to stand near the doorway to the bedroom and observe the search to be conducted therein. This was done as the room was congested and could not allow for the proper movement of dog and handler."* The relevant part of where the Claimant was standing in the bedroom in the Station Diary Extract for the San

Fernando Police Station for the 26th January 2012 stated that *“PC Mohammed with K9 Tango on leash proceeded to a bedroom to continue the search in the presence of PC Kalloo and Bryan Barrington who was standing in the door way viewing the search. Bryan again started shouting threats to the officers. PC Mohammed again told Bryan of his concern with regards to the K9. On completion of the search of the bedroom, PC Mohammed with K9 Tango on leash turned to exit the said room when Bryan Barrington stepped into the bedroom towards PC Mohammed and was bitten by K9 Tango”*.

72. It was submitted on behalf of the Claimant that the evidence of the Defendant’s witnesses was not to be believed since it was untenable and they contradicted each other both in their witness statements and in cross-examination. In particular Counsel for the Claimant argued that PC Mohammed, by his witness statement and in cross-examination, although appreciating that a bite to a man’s genital area is very painful, was adamant that the Claimant did not scream or shout when the dog bit his genital area but PC Kalloo, by his witness statement and in cross-examination, stated that the Claimant screamed out and that it was so loud that his wife in the living room could heard him.
73. It was also submitted that the Defendant’s witnesses were evasive when it came to questions relating to whether the Claimant was handcuffed behind his back or in front of him. Both witnesses when asked questions relating to what the Claimant did with his hands while Tango held on to his genital area could not give a direct answer of yes or no. It was submitted that the Defendant’s witnesses attempted to evade answering those question which also undermined the Defendant’s witnesses’ credibility.
74. I accept that there were inconsistencies in the evidence of the Defendant’s witnesses but in my view the said inconsistencies was not on material but collateral issues which did not affect the credibility of the witnesses’ evidence. In my opinion, a degree of inconsistency in the observations of PCs Mohammed and Kalloo of the events of the bedroom was to be expected since PC Mohammed’s evidence was that his attention was focused primarily on Tango; and PC Kalloo’s evidence, as the officer executing the search warrant, was that he was present for observing the entire search and for escorting the Claimant to witness it.

75. Counsel for the Claimant also submitted that throughout the search of the home the police officers had complete control of the Claimant and his family, in particular the Claimant was under arrest and in handcuffs during the search of the bedroom. In this regard Counsel for the Claimant argued that on a balance of probability it is highly unlikely that the Claimant, whose hands were handcuffed, only clothed in an underwear, under arrest and in the control of PC Kalloo, escaped the control of PC Kalloo and walked towards Tango in the bedroom. He also argued that on a balance of probabilities it was likely that Tango, being in the small confines of the Claimant's bedroom and having only one exit to pass, passed in close proximity to the Claimant, and being unpredictable grabbed onto the Claimant without the knowledge and/or command of the handler.
76. In response Counsel for the Defendant argued that the Defendant's case has never been that PC Kalloo and the other police officers exercised complete or absolute control of the Claimant, throughout the search of the Claimant's home or of the bedroom. The Defendant accepted that PC Kalloo stated in cross-examination that the Claimant's freedom was restricted due to this arrest, but that there was no indication that the Claimant's range of movement was limited to the extent that the Claimant was unable to walk independently of PC Kalloo.
77. PC Mohammed evidence was that in his experience as a police officer, the Claimant would not be free to move, that he was under the control of the police officer escorting him. The escorting officer was PC Kalloo. PC Mohammed said that when the Claimant stepped away from PC Kalloo, nothing was said to indicate that the Claimant was out of the control of PC Kalloo. However, PC Kalloo in cross-examination said that when the Claimant stepped away from him, he immediately commanded the Claimant to come back.
78. PC Kalloo stated in cross-examination that during the search the Claimant and his family were not permitted to move without an officer's permission. PC Kalloo confirmed that at the time of the search of the bedroom the Claimant was under his control and could not go anywhere without his knowledge or permission and that he stood less than a foot behind the Claimant to ensure this. PC Kalloo as the officer who escorted the Claimant to this part of the house, agreed when cross-examined, that the Claimant was in his custody and that this meant that the

Claimant was not free to go outside or to another room. Notably, PC Kalloo was not questioned tested on whether apart from the use of handcuffs, it was standard procedure to apply physical force to a person under arrest to restrict the Claimant's range of movement in circumstances as the bedroom where the Claimant was in a confined space where there was limited or no risk of escape from the home; and whether PC Kalloo applied force to the Claimant in physically holding on to the Claimant in a manner which would have prevented him from walking away from PC Kalloo.

79. The Claimant denied ever stepping towards PC Mohammed before he was bitten by Tango.
80. I agree with Claimant's submission to the extent that the police officers exercised control over the Claimant upon entering the house to execute the search warrant. However based on the Claimant's own evidence that following his arrest and being handcuffed in the living room, he volunteered to accompany the officers to the search of the bedroom and that he walked there in the presence of PC Mohammed, PC Kalloo and another officers, the police officers did not have absolute control over him and by extension they cannot be held responsible if the Claimant stepped away from PC Kalloo towards PC Mohammed and Tango when he was bitten.
81. Having found that PCs Mohammed and Kalloo did not exercise complete control over the Claimant in the bedroom and having accept their evidence on the Claimant's position at the entrance of the room in the doorway when the search of the bedroom was commenced I concluded that the Claimant was at the doorway of the bedroom and not at the foot of the bed.

Was Tango held on a leash or restraint in the bedroom

82. I have already found that Tango was held by a leash during the search of the living/dining room and kitchen area. The Claimant contended that Tango was not restrained in the search of the bedroom since PC Mohammed had failed and/or neglected to secure Tango.

83. The relevant part of the Station Diary Extract for the 26th January 2012 for the San Fernando Police Station and for the Police Canine Branch Caroni concerning the search of the bedroom both stated that Tango was on a leash during the search of the bedroom.
84. PC Mohammed's evidence in both his witness statement and in cross-examination, was that as he turned around from the wardrobe, he saw the Claimant facing him, behaving in an enraged manner, and as such he attempted to direct Tango to stand behind him by pulling on his leash. Further, once Tango bit the Claimant in the vicinity of his crotch, he immediately jerked on the leash and commanded Tango to 'out,' repeating this command about 3-4 times. He recalled that Tango was short on the leash, since he was ready to walk out of the room and the loop of the leash was in his left hand and Tango was on his left side.
85. PC Kalloo's evidence was that he observed that PC Mohammed still had Tango on a leash during the search of the bedroom. According to PC Kalloo's upon Tango biting the Claimant, PC Mohammed immediately shouted three commands one after the other to Tango to release the Claimant. Upon the third verbal command from PC Mohammed, Tango released the Claimant. It took approximately less than 20 seconds for Tango to release the Claimant. PC Kalloo did not see PC Mohammed physically yank Tango away from the Claimant. Once the Claimant was released by Tango, PC Kalloo stated that he immediately guided him towards the living room and the search was immediately suspended.
86. The Claimant's evidence in chief and under cross-examination was that Tango was allowed to roam freely in the bedroom but this evidence was inconsistent with his statement to the police on the 1st February, 2012, where he acknowledged the presence of a 'strap' attached to the dog at the time he was bitten.
87. It was submitted on behalf of the Claimant that although Tango was wearing a correction collar it was not held and/or restrained by any leash during the search of the bedroom since based on the evidence of the Defendant's witnesses they both approximated that Tango held onto the Claimant's genital area for approximately twenty-seconds and that if Tango was on a leash and

PC Mohammed's attention was primarily on the dog during the search of the Claimant's bedroom he would have been successful in preventing the dog from biting the Claimant and it would not have taken approximately twenty-seconds for PC Mohammed to have Tango to release its grip of the Claimant's groin.

88. I do not agree with the Claimant's submission since in my view the absence or presence of a leash was immaterial in the time it took for PC Mohammed to get Tango to release its grip. In my opinion the weight of the evidence including the Claimant's own statement to the police five days after the incident supports a finding that Tango was also restrained with a leash during the search of the bedroom.

Removal/substitution of Claimant as the witness for the search of the bedroom

89. The Claimant contended that the police officers were of the view that the Claimant was behaving in an aggressive manner during the search of the bedroom then it was reasonable for them to remove the Claimant from the area and at least suggest that someone, such as the Claimant's wife, be brought in place of the Claimant; and for the police officers to ensure that Tango was a safe distance away from any person, especially any person who the handler would not want to be attacked. The basis for this submission was PC Mohammed's evidence in cross-examination that he could have suggested that the Claimant be removed and replaced with some other person during the search of the bedroom.
90. The Defendant submitted that this was an inaccurate representation of PC Mohammed's evidence since PC Mohammed was very clear that since he was carrying out the search with Tango, he could not control other police officers who were part of the search party. Further, Counsel for the Defendant stated that when asked about his ability to suggest a switch in the family member and why he did not suggest as such, PC Mohammed did not provide a direct answer or agree with Counsel for the Claimant that he had such an ability but answered that the *'wife and daughter were behaving in a similar manner outside,'* and that PC Kalloo accepted that there was the option of replacing the Claimant with another member of the family,

but Counsel for the Claimant failed to question PC Kalloo on why this option was not pursued. Therefore there was no evidence to support the Claimant's submission.

91. The Defendant also contended that the issue of a substitution may not have been feasible since both the Claimant and Ms Baboolal protested aggressively and behaved in an irate manner throughout the duration of the search of the home and bedroom.
92. The evidence of PCs Mohammed and Kalloo which was corroborated by the Station Diary Extracts for the San Fernando Police Station and the Police Canine Branch for the 26th January 2012 was that the Claimant and his wife Ms Baboolal protested in a loud and aggressive manner during the search of the house. The said protests caused PC Mohammed to warn them on at least two occasions against such conduct due to the presence of a tactically trained dog, Tango.
93. The Claimant's evidence was that he initially protested against Tango entering his home because having a dog in his home was against his religion and it was seen as unclean. Under cross-examination he admitted that he was unhappy that Tango was in his living room, his wife, Ms Baboolal also protested Tango's presence in the home and he protested while Tango searched his home. The Claimant could not recall how long he protested but he indicated that he protested while Tango searched his living room and he was displeased that the dog was anywhere in the house. Ms Baboolal's evidence was that they stopped protesting because the police officers refused to heed their protests.
94. I do not accept that the Claimant and Ms Baboolal's evidence that they stopped protesting because the police officers refused to heed their protests since the Claimant's Amended Statement of Case is notably silent on this matter and the first time this was raised was in the Claimant's witness statements following service of the Defendant's Defence. Further, the Claimant's evidence under cross-examination was that he protested both before Tango was released and while it searched the living room, and that he was displeased with the dog being '*anywhere in the house*'. Further the Claimant's demeanour under cross-examination was

hostile, belligerent and evasive in his responses, taking long pauses, before responding to questions posed to him on this issue and which contradicted his pleaded case.

95. Given that the police officers were aware that the Claimant and his wife Ms Baboolal were both behaving aggressively, the question is whether they acted reasonably by not substituting the Claimant with his wife for the search of the bedroom. In my opinion the police officers acted reasonably for the following reasons. Firstly, the Claimant on his own evidence volunteered to witness the search of the bedroom and not his wife. Secondly, it was not a matter merely of substituting the Claimant with his wife since she would have to consent. Thirdly, there was no material difference by removing the Claimant due to him protesting, in exchange for his wife who also protested the search of the home by Tango. Fourthly, the Claimant's wife was supervising the two (2) minors of the family including a 3-month old baby in the living room, as compared to the Claimant who was under arrest and handcuffed. Fifthly, if there was no adult present to witness the search of the bedroom, it could not have continued in obedience to the lawful search warrant.
96. In my opinion, PCs Mohammed and Kalloo adopted a more reasonable course of action by positioning the Claimant to stand in the doorway of the bedroom; by warning him about his aggressive behaviour and its effect on Tango, coupled with the warning given at the commencement of the search of the home about not approaching Tango or its handler.

Whether the injury sustained by the Claimant was on account of his own negligence?

97. It was submitted on behalf of the Defendant that the Claimant's negligence caused his injury on the day of the incident. The Defendant also argued that if the Court found that the Claimant was only partially responsible for the injury sustained that a finding of 90% contribution on the Claimant's part was just and equitable having regard to the evidence.
98. The Claimant maintained his position that the servants and or agents of the Defendant were entirely responsible for his injuries.

99. To establish contributory negligence the onus is on the Defendant to prove that it was the Claimant's negligent actions caused his injuries. **Halsbury's Laws of England**¹⁰ at paragraphs 77 and 78 states that:

“The existence of contributory negligence does not depend on any duty owed by the claimant to the defendant and all that is necessary to establish a plea of contributory negligence is for the defendant to prove that the claimant did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury...

A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonably prudent person, he might hurt himself. A claimant must take into account the possibility of others being careless. As with negligence, the standard of care is objective in that the claimant is assumed to be of normal intelligence and skill in the circumstances...”

100. The standard of care in contributory negligence cases is judged by what is reasonable in the circumstances and the test of reasonable care is objective. In determining what is reasonable in the circumstances the knowledge by the Claimant or the Defendant of an existing danger is an important element to be considered. **Halsbury's Laws of England** describes the approach to be taken as:

“The question is not whether the claimant realised the danger but whether the facts which he knew would have caused a reasonable person in his position to realise the danger. It is a question of fact in each case whether the knowledge of the claimant in the particular circumstances made it so unreasonable for him to do what he did as to constitute contributory negligence...”¹¹

101. Before the Claimant was bitten by Tango he was warned by both PC Mohammed and PC Kalloo to desist from aggressive behaviour; to avoid approaching PC Mohammed and Tango and to adopt the course of action advised by PC Mohammed for attracting PC Mohammed's attention in the course of the search which was to call out to him. Therefore the Claimant was

¹⁰ 5th ed at Volume 78 (2010)

¹¹ 5th ed at Volume 78 (2010) at para 80

well aware of the risks which were involved if he failed to comply with the precautions. It was therefore foreseeable that these acts and/or omissions on the part of the Claimant, were likely to result in injury to himself.

102. In my opinion a reasonable man in the Claimant's position would have cooperated with the police officers present and heeded the express warnings of the officers to desist from aggressive behaviour; at all times to maintain a safe distance from Tango; and due to the small size of the bedroom being searched, to remain in the doorway of the bedroom, where positioned at the commencement of the search of the bedroom.
103. I concluded that it was the Claimant who failed to take reasonable care and as such caused his own injury by failing to heed the warnings given to him by PCs Mohammed and Kalloo.

Conclusion

104. The evidence of the Claimant and his wife was inconsistent on several key issues of fact which were material to the Claimant's case, namely the existence of the leash to restrain Tango, the warnings and precautions communicated to the Claimant and his family at the commencement of the search and the manner in which the search of the Claimant's home was carried out. In my opinion, Defendant's servants and/or agents PC Mohammed exercised reasonable care in executing the search of the Claimant's home with Tango, and did not breach the duty of care owed to the Claimant and his family on the day of the incident. The Defendant's servants and/or agents were not obliged to guard against every conceivable eventuality. Having informed the Claimant of the precautions to be observed and the warning of the dangers of aggressive behaviour toward PC Mohammed and Tango, the Defendant's servants and or agents were entitled to expect the Claimant to comply with the said warnings and precautions and to take reasonable care for his own safety. The Claimant failed to do so therefore he caused his own injury.

Order

105. The Claimant’s action is dismissed.

106. The Claimant to pay the Defendant costs of the action. I will hear the parties on costs.

.....
Margaret Y Mohammed
Judge