

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-02467

BETWEEN

JAMESON JOHN

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery: July 26, 2019

APPEARANCES:

Mr Subhas Panday instructed by Ms Petronilla Basdeo Attorneys at law for the Claimant.

Ms Ronnelle Hinds instructed by Ms Kendra Mark Attorneys at Law for the Defendant.

JUDGMENT

1. Allegations of brutality by persons in Trinidad and Tobago against law enforcement personnel have become common in the present landscape of this jurisdiction. In the instant case one of the issues which the Court is called upon to determine is the alleged assault and battery of the Claimant by certain police officers attached to the Princes Town Police Station in

December 2013. The other issues concerned his arrest, detention and prosecution for the offences of breaking and entering and burglary for which the office of the Director of Public Prosecutions offered no evidence against the Claimant about 18 months after he was charged.

THE CLAIMANT'S CASE

2. The Claimant at the material times was an eighteen-year-old farmer and vendor involved in planting, reaping and selling provisions. He lived with his mother and siblings and he was the sole breadwinner of the family. He was a slow learner who could read a little but could not write well and had difficulty in comprehending certain things. He has no previous convictions and was a person of good character.
3. On the 23 December 2013, at about 8.00 to 9.00 a.m. he was at the home of a neighbour, Pooran Seepaul on Fort St George Road a short distance from his home. Whilst he was waiting on the neighbour to accompany him to go to work to reap produce, he observed a white and blue police vehicle stopped in front of the house. Police officers alighted from the vehicle and asked who Jameson John was. He told them that he was Jameson John. Most of the officers were dressed in plain clothes however a female officer was wearing a bulletproof vest with the word "POLICE" written at the front of it.
4. One of the officers dragged him to the police vehicle and shoved him in it and they drove away. Whilst in the police vehicle the police officers questioned him about some stolen jewellery. He denied any knowledge of same. One of the officers in the police vehicle began to terrorize him asking him where the jewellery was. He denied any knowledge. The police vehicle

stopped at a very lonely road. Both sides of the road were densely forested, and there was no houses for about a kilometre from where the vehicle stopped. He became very frightened and all the officers came out of that vehicle.

5. One of the officers dragged the Claimant out of the police vehicle in a very rough manner. The Claimant was afraid that if they beat him and he screamed that no one would hear. One of the officers cuffed the Claimant in his stomach and he immediately fell sideways to the ground. He was in excruciating pain, and experienced difficulty in breathing. Whilst on the ground the officers kicked him all over the chest, back, feet and face. Whilst he was being kicked, some were standing in a circle at this time. The officers were stomping upon him. He curled up in an attempt to withstand the blows. He was dragged by his right elbow on the road. He was in excruciating pain and helpless. He thought about trying to escape because of the severe beating, he felt as though he was going to die but he realized that the officers were armed with guns and based on their violent behaviour, he was fearful that they would kill him and did not attempt to do so. He screamed out in pain but the officers continued to kick and stomped on him.

6. A policewoman stood by the Claimant's side and he was asked, "Where is d people jewellery?" The Claimant repeated that he did not know about any jewellery. The Claimant pleaded with the officers to stop beating him. Whilst he was on the ground in pain, he begged the officers to tell him who was the owner of the jewellery they were asking him about. Instead of giving him the information, one of the officers demanded that he stood up. Despite the excruciating pain, he complied. One officer with gold teeth then

pushed him and instructed him to lie down at the back of the jeep. He complied.

7. A short while afterwards the Claimant felt someone grabbed him by his pants and the said officer with the gold teeth started to beat him several times on his buttocks with an object, he felt as if he was being “planassed” with an object like a cutlass. He began to cry. An officer pushed him back into the jeep where he laid down in the trunk. He was in severe pain. Whilst the vehicle was travelling, he heard the officers laughing and joking. One of the officers told him that if he did not get the people’s things that they would light him up.
8. The Claimant was dragged out the jeep. One of the police officers escorted him to a room at the Princes Town Police Station and he was made to sit on a chair. The officers surrounded him. An officer passed in front of him and hit him one hard cuff in his belly, and he cringed with the blow. He was ordered to stand up and he complied. Whilst he was still in pain, the officers further interrogated him. An officer instructed him to take up a nearby bottle at the back of him which contained gas and throw it on him. He was so terrified that he began to comply with the instructions and as he was going to throw the gas on himself when they stopped him.
9. The said officer then took the bottle away and started calling him derogatory names. He felt ashamed and abused. Another officer then cuffed him in his belly. He felt dizzy and he collapsed. An officer with a cutlass in his hand, ordered him to move across on the side of the table where he was sitting.

10. The Claimant was then instructed to put his hand on the table, pull his pants down and bend his bottom over the table. In extreme fear and humiliation, the Claimant pulled down his pants straight down to his knees. The officer then started to beat him with the cutlass in the area of his buttocks. When the Claimant started to scream and bawl, one of the other officers rushed and closed the door to the room. Whilst being beaten with the cutlass by the officer he began to feel weak and he again collapsed. Another officer shouted at him to get up and again place his hands on the table. He complied and the officer continued “planassing” him on his back and buttocks. He then observed an Indian officer who had a white bottle containing liquid in his hand. He felt the liquid being thrown down his back and buttocks. It began to run down his boxers unto the part of the area where he was severely beaten. When the liquid touched the area where he received the blows, it began to burn him so much that he felt that he would die and he started to bawl.

11. Whilst this was taking place the Claimant felt one of the officers come to the side of him and touch him with something and he felt something like a strong electric shock running through his body. His whole body began to tremble. He immediately fell to the ground writhing in pain. He felt as though he was going to die. He was ordered to stand up, he was unable to do so and one of the officers dragged him up. He then felt a kind of “scratch thing” behind his back close to his buttocks, which sounded like a cigarette lighter being lit. He heard a sound like a “voop” and suddenly felt like his buttocks caught a fire. He felt a hot, burning sensation on his back and he realized his body was on fire. The pain resulting from the fire and burning on his body was so much that he could not bear it. He felt as though he was dying and began screaming.

12. None of the officers came to his aid. He attempted to spin around in the hope that the fire would out but the fire continued to burn his body. Whilst spinning around he realized he could not move, he was handicapped because his pants was down by his knees and the officers were surrounding him. One officer then pushed him to the ground and began stamping on him. Eventually the flames were extinguished and he laid crouched on the ground, somewhat sideways because the pain was so unbearable. One of the officers lifted him, he then held on to the table in a crouched position because of the intensity and the unbearable nature of the pain. His entire body was burning and paining.

13. Whilst in pain the Claimant heard the officers laughing and saying that he was smelling stink like a burnt "manicou". He was kept in a room for hours after he was beaten and burnt. All during this time, he thought that he would die at any moment. It was only after pleading with them for hours the officers took him to the Princes Town Health Facility where he was attended to and transferred to the San Fernando General Hospital. He was handed the sum of Fifteen Dollars (\$15.00) by one of the officers, who told him to travel home after his release from the hospital. He was then transferred to the San Fernando Hospital by ambulance, there he was warded for 14 days and received further medical treatment. At no time during the interrogation was he told of his rights and privileges nor was he cautioned or informed of his rights to an attorney or friend.

14. On Sunday 5 January 2014 when he was discharged from the San Fernando General Hospital, he was escorted by police officers to the Princes Town Police Station where he was visited by Attorney at Law, Shaun Tikasingh, who made representations on his behalf and he was subsequently transferred to the San Fernando Police Station. During his brief stay at the

Princes Town Police Station, two officers who were involved with the beating and burning approached him. He became extremely fearful for his life. He was asked to sign certain documents and to subject himself to an interview. He declined to do so. He underwent surgery on the 15 April 2014 for his injuries sustained whilst he was in the custody of the police officers.

15. The Claimant was charged in January 2014 for the offences of Breaking and Entering and Robbery. He was not called upon to enter any plea and he was given his own bail. On the 26 June 2015, a nolle prosequi was entered against him.

16. Based on the aforesaid facts the Claimant seeks the following orders:
 - a. Damages including aggravated and/ or exemplary damages for malicious prosecution of the Claimant;
 - b. Damages including aggravated and/or exemplary damages for wrongful arrest of the Claimant;
 - c. Damages including aggravated damages and/or exemplary damages for false imprisonment of the Claimant;
 - d. Damages including aggravated damages and/or exemplary damages for assault of the Claimant;
 - e. Damages including aggravated damages and/or exemplary damages for battery of the Claimant;
 - f. Special damages;
 - g. Interest;
 - h. Costs;
 - i. Such further and/or other relief as the court may seem just.

THE DEFENCE

17. The Defendant's case was that Woman Police Constable Alena Ambrally Regimental No. 18962 ("WPC Ambrally") lawfully arrested and charged the Claimant. The Defendant relied on the following facts:
- a. On 22 December 2013 at 6:50 am Police Constable Dookie Regimental Number 14792 ("PC Dookie"), Police Constable Ramdhin Regimental Number 18631 (PC Ramdhin") and WPC Ambrally received a report of burglary from Akimo Garcia ("Mr Garcia") and La'shanna Alleyne ("Ms Alleyne") which occurred at No 277 Indian Walk Moruga Road.
 - b. Ms Alleyne and Mr Garcia informed officers that at around 10:00pm on 21 December 2013 they locked and secured their home and at around 2:20 pm on 22 December 2013 they were both awoken by the sounds of movements in their home.
 - c. They observed 2 men, one approximately 5'5 tall, slim built with their face partially covered armed with cutlasses and another man approximately 5'7 tall, stocky built also armed with a cutlass and having his face covered. Both men were of brown complexion and of African descent.
 - d. The two suspects robbed them of a gold chain valued at \$15,000.00, a gold band valued at \$8,000.00, a gold watch valued at \$860.00, a gold ring valued at \$500.00, a Kindle valued at \$1,800.00, a Samsung cellular phone valued at \$199.00, a Sony Ericson phone valued at \$2,000.00, a Digicel phone valued at \$700.00 and a Samsung Galaxy phone valued at \$1,200.00 and \$5,000.00 in Trinidad and Tobago currency. The two men escaped on foot.

- e. At 7:25 am, the said officers left the Princes Town Police Station and visited the said premises. Upon their arrival, they received information, made certain observations and interviewed persons.
- f. On 24 December 2013 at about 10:20, WPC Ambrally together with a party of officers including PC Ramdhin, PC Dookie, Acting Sergeant Reid Regimental Number 15460 (“Sgt Reid”), Police Constable Marshall Regimental Number 18550 (“PC Marshall”), Police Constable Teesdale Regimental Number 18892 (“PC Teesdale”), Police Corporal Hosein Regimental Number 13093 (“PC Hosein”), Police Constable Watson Regimental Number 16134 (“PC Watson”), and Police Constable Harrypersad Regimental Number 18962 (“PC Harrypersad”) left the said station on enquiries in police vehicles PCY 6682 and PCY 8493.
- g. On 24 December 2013, in the morning period, there was an exercise being conducted by the CID department. The police officers were dressed in plain clothes but some had on police hats and bulletproof vests and the vehicles participating were marked police vehicles. This exercise involved arresting and detaining suspects in crime and executing search warrants. During the exercise, two male persons were detained relative to the report of burglary.
- h. The two male persons detained were taken to the Princes Town Police Station and they were interviewed. Information was received that the Claimant was also involved in the burglary. As a result, officers left the station and proceeded to Fort George Road Indian Walk.

- i. Upon arrival at the said location, the officers met the Claimant walking along the said road.
- j. WPC Ambrally caused the police vehicle to stop alongside the Claimant. The said officers alighted from the vehicle and approached the Claimant. WPC Ambrally identified herself as a police officer by showing him her Trinidad and Tobago Police Identification Card and the other officers identified themselves in a similar manner.
- k. WPC Ambrally informed the Claimant of a report of burglary made by Ms Alleyne which occurred during the period 21 December 2013 to 22 December 2013 at No 277 Indian Walk Moruga Road where she together with Mr Garcia was robbed of jewellery, cell phones, a tablet and a quantity of cash by African men all armed with cutlasses, brown complexion and faces partly covered, in which she was investigating.
- l. WPC Ambrally informed the Claimant that she had information that he together with other persons committed the said offence cautioned him and he replied 'Officer Brandon look out and me and Shaquille went and rob the people them''.
- m. WPC Ambrally arrested and then informed the Claimant of his constitutional rights and privileges. He was then escorted to the Princes Town Police Station.
- n. When the Claimant arrived at the Princes Town Police Station, he was placed in an enclosed room at the station and sat at a table.

- o. The Claimant was informed about the robbery which occurred in Indian Walk and he told them that “he, Brandon and Shaquille went in de old lady house. Brandon was de look out man and me and de next man gone in de house and rob de people dem”.
- p. Officers recorded the Claimant utterances and he was asked to sign the statement. Upon going to sign the statement, he sat next to a lit candle and his jersey caught on fire.
- q. Officers assisted in putting out the fire on the Claimant’s jersey and took the Claimant to the Princes Town Health Centre for medical attention.

THE ISSUES

- 18. If the Claimant’s version of the events is correct it means that, he was detained without reasonable and probable cause by the police officers on the 23 December 2013 and that during this time he was assaulted and violently beaten and burnt to the extent that he had to obtain medical treatment during his 14 days stay at a hospital and subsequently.
- 19. Conversely, if the Defendant’s version is correct then the police officers had reasonable and probable cause to arrest and charge the Claimant, and in doing so, they used reasonable force.
- 20. For the Claimant to succeed with his action the following issues are to be determined in his favour:
 - a. Did WPC Ambrally have reasonable cause to suspect that the Claimant committed an offence?

- b. Has the Claimant established an absence of reasonable and probable cause by WPC Ambrally to charge him for the offences of burglary?
 - c. Has the Claimant proved malice on the part of WPC Ambrally in initiating proceedings against him?
 - d. Is the Defendant liable for the assault and battery of the Claimant?
 - e. If the Claimant succeeds in proving his claim what is an appropriate award of damages to compensate the Claimant?
21. 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**¹ cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**²).
22. The Court of Appeal in **The Attorney General of Trinidad and Tobago v Anino Garcia**³ 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.

DID WPC AMBRALLY HAVE REASONABLE CAUSE TO SUSPECT THAT THE CLAIMANT COMMITTED AN OFFENCE?

¹ Privy Council Appeal No. 36 of 1897

² CV 2006-01661

³ Civ. App. No. 86 of 2011 at paragraph 31

23. Although the Claimant did not expressly state in his evidence that he was unlawfully arrested or falsely imprisoned by the officers on the 23 December 2013, the Defendant did not dispute the fact that the Claimant was arrested and detained on that day.
24. The tort of false imprisonment is established by proof of the fact of imprisonment and the absence of lawful authority to justify the imprisonment⁴. In **Ramsingh v The Attorney General of Trinidad and Tobago**⁵ the Privy Council repeated the principles to determine the tort of false imprisonment as:
- i. The detention of a person is prima facie tortious and an infringement of section 4 (a) of the Constitution of Trinidad and Tobago;
 - ii. It is for the arrester, to justify the arrest; that is the Defendant in this case;
 - iii. A police officer may arrest a person if with reasonable cause he suspects that the person concerned has committed an arrestable offence;
 - iv. Thus the officer must subjectively suspect that the person has committed such an offence; and
 - v. 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;
 - vi. Any continued detention after arrest must also be justified by the detainer".
25. **Ramsingh** reinforced that the onus is on the police to justify the arrest in an action for unlawful arrest and to establish reasonable and probable

⁴ Clerk & Lindsell on Torts 20 ed at paragraphs 15-23

⁵ [2012] UKPC 16 at para 8

cause for it.⁶ The test is partly objective and partly subjective⁷. It is subjective because the arresting police officer must have formulated a genuine suspicion within his own mind that the accused person committed the offence. It is partly objective, as reasonable grounds for the suspicion are required by the arresting officer at the time when the power is exercised.

26. It was not in dispute that the Claimant was arrested without a warrant.
27. In **O'Hara v Chief Constable Of The Royal Ulster Constabulary**⁸ it is stated at page 291 of the judgment:
- "The compromise which English common and statutory law has evolved for the accommodation of the two rival public interests while these first steps are being taken by the police is twofold: (1) no person may be arrested without warrant (i.e. without the intervention of a judicial process) unless the constable arresting him has reasonable cause to suspect him to be guilty of an arrestable offence; . . . (2) a suspect so arrested and detained in custody must be brought before a magistrates' court as soon as practicable ..."
28. The power of a police officer to arrest and detain a person without warrant exists not only at common law, but also under statute. These powers are encapsulated in the provisions of the **Police Service Act**⁹ and the **Criminal Law Act**¹⁰.

⁶ Dallison v Caffery [1965] 1 Q.B. 348 at 370).

⁷ O' Hara v Chief Constable of the Royal Ulster Constabulary [1997] 1 AER 129 p 138j –139a) per Lord Hope of Craighead

⁸ [1997] A.C. 286

⁹ Chapter 15:01

¹⁰ Chapter 10:01

29. **Section 46** of the **Police Service Act** provides:
- “(2) Without prejudice to the powers conferred upon a by subsection (1), a police officer, and all persons whom he may call to his assistance, may arrest without a warrant a person who within view of such police officer commits an offence and whose name or residence is unknown to such police officer and cannot be ascertained by him. “
30. **Section 3(4)** of the **Criminal Law Act** provides:
- “Where a Police officer, with reasonable cause, suspects that an arrestable offence has been committed; he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”
31. In **Dallison v Caffrey**¹¹ at page 366 Lord Diplock stated as follows:
- “The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man assumed to know the law and possessed of the information which in fact was possessed by the Defendant would believe that there was reasonable and probable cause.”
32. The Claimant was arrested and charged under section 27(b) (ii) of the **Larceny Act**¹² which provides:
27. Any person who in the night
- (a) breaks and enters the dwelling house of another with intent to commit any arrestable offence therein; or

¹¹ [1935] 1 QB 348

¹² Chapter 11:12

- (b) breaks out of the dwelling house of another, having
 - (i) entered the said dwelling house with intent to commit any arrestable offence therein; or
 - (ii) committed any arrestable offence in the said dwelling house,

is guilty of burglary and liable to imprisonment for fifteen years.

- 33. Counsel for the Claimant did not make any submissions on his assertion that he was wrongfully arrested on the 23 December 2013.
- 34. Counsel for the Defendant argued that the Claimant is not entitled to any relief for wrongful arrest nor false imprisonment since at the time the Claimant was arrested, WPC Ambrally had information from her investigation relative to a report of burglary made by Ms Alleyne and Mr Garcia which was not tested nor undermined in cross examination and her evidence was supported by the contemporaneous notes made in the Station Diary extract of the Princes Town Police Station which was produced to the Court at the trial.
- 35. WPC Ambrally outlined the details of her investigation with respect to a report of burglary at paragraphs 4 to 13 of her witness statement. She stated that on 22 December 2013 at 6:50 am she together with PC Dookie and PC Ramdhin received a report of a burglary from Mr Garcia and Ms Alleyne which occurred at No 277 Indian Walk Moruga Road. They reported that they observed two men approximately 5'5" tall, slim built with their face partially covered armed with cutlasses and another man approximately 5'7" tall, stocky built also armed with a cutlass and face covered. Both men were of brown complexion and of African descent. The

Station Diary Day Duty Extract dated 22 December 2013 supported this evidence.¹³

36. At around 7:25 am WPC Ambrally and other officers left the Princes Town Police Station¹⁴ and visited the said premises where they were provided with further information, made observations and interviewed persons.
37. On 24 December 2015, WPC Ambrally together with PC Ramdhin, PC Dookie, Sergeant Reid, PC Marshall, PC Teesdale, PC Hosein, PC Watson, and PC Harrypersad left the station on enquiries in police vehicle PCY 6682 and PCY 8493. The officers were dressed in plain clothes but some had on police hats and bulletproof vests and were on an exercise involving arresting and detaining suspects in crime and executing warrants including the report relative to the report of burglary received from Mr Garcia and Ms Alleyne.
38. During the exercise, they visited Realise Road Barrackpore, the home of Ineka Mohamed at 8:30 am where she met Mr Shaquille Dube. WPC Ambrally told Mr Dube of the robbery and cautioned him and he replied "Officer me, Brandon and Jameson rob dem people, Jameson take the things to sell it."
39. At around 9:00 am they proceeded to No. 346 Indian Walk Moruga where WPC Ambrally met Mr Brandon Superville and told him of her investigations. She cautioned him and he replied, "I only look out for Dube and Jamerson."

¹³ Exhibit "A.A 1" of WPC Ambrally's witness statement

¹⁴ This evidence was supported by the Station Diary Day Duty Extract dated 22 December 2013.

40. The Station Diary Extract for the 24 December 2013¹⁵ reflected the aforesaid position but it also indicated that both Brandon Superville and Shaquille Dube were brought to the station for enquiries to continue. This information was notably missing from WPC Ambrally's witness statement.
41. WPC Ambrally testified that during the course of the exercise, she and other officers visited Fort George Road Indian Walk where they met the Claimant walking along the roadway. She caused the police vehicle to stop and she alighted from it, approached him in the company of other officers, and identified herself by showing her Trinidad and Tobago Police Identification Card She observed that the Claimant was bareback, he had a jersey wrapped on his right leg and he wore a three-quarter pants. She informed him of her investigations and that she had information that he together with other persons committed the said offences. She cautioned him and he replied, "Officer Brandon look out and me and Shaquille went and rob the people them." This information was also set out in the Station Diary Extract for the 24 December 2013¹⁶.
42. The Claimant was arrested, informed of the reason for his arrest, cautioned, informed of his legal rights and privileges and taken to the Princes Town Police Station.
43. In cross-examination, WPC Ambrally testified when she saw the Claimant at Fort George Road she informed the Claimant about the report of the burglary and robbery and the information she had at that time. She said he made an utterance. She denied that the Claimant did not say anything to

¹⁵ Exhibit A.A 2" of WPC Ambrally's witness statement

¹⁶ Exhibit A.A 2" of WPC Ambrally's witness statement

her. She said she informed the Claimant that he was under arrest. She was unable to recall the exact time she arrived at Fort George Road but she stated that they left after the Claimant was arrested and the officers stayed no longer than 10 minutes at the scene.

44. WPC Ambrally's evidence on the nature of the report she obtained from Mr Garcia and Ms Alleyne; her visit to their premises; the statements made by Mr Shaquille Dube, Mr Brandon Superville and the Claimant incriminating them in the breaking and entering and burglary were consistent with the Defendant's case, were not undermined in cross examination and were supported by the contemporaneous document attached to WPC Ambrally's witness statement namely the Station Diary extract for the Princes Town Police Station.
45. The Claimant's evidence in chief mirrored his Statement of Case. He testified that on the 23 December 2013 at about 8:00 am to 9:00 am he was on the premises of neighbour, Pooran Seepaul, a short distance from his home. Whilst waiting for Pooran to accompany him to reap produce, he observed a white and blue police vehicle stopped in front of Pooran's house. This aspect of the Claimant's case was undermined in cross-examination since he stated that he was not at Pooran Seepaul's house but at Brian St Paul's house waiting on him to go and dig for yam which undermined the credibility of the Claimant's evidence of where he was when he was first met by the police officers.
46. The Claimant then testified that police officers alighted from the vehicle and asked who Jameson John was. He indicated that he was Jameson John. According to the Claimant, most of the police officers were in plain clothes

except for a female officer who wore a bulletproof vest with the word "POLICE" written at the front.

47. The Claimant stated that one of the officers dragged him to the police vehicle and shoved him into it and drove away. Whilst in the police vehicle, he was questioned about some stolen jewellery and he denied any knowledge of same. A red fat face officer seated in the vehicle began to terrorise him asking where the jewellery was to which he responded that he did not take anybody's jewellery.
48. In cross-examination, the Claimant maintained that after an officer pushed him into the vehicle he was asked about jewellery and he indicated that he did not know anything about jewellery. He denied that WPC Ambrally informed him about stolen jewellery.
49. According to the Claimant, shortly afterwards another vehicle with a number of police officers arrived and stopped a short distance from the vehicle he was in. The area was lonely and densely forested. He was dragged out of the police vehicle and another officer, cuffed him in his stomach causing him to fall sideways on the ground. While on the ground, he was kicked all over his chest, back, feet and face. While he was being kicked, some of the officers were standing in a circle. He was dragged by his right elbow on the road.
50. At that time, the woman wearing a bulletproof vest stood at his side and asked him, "where is d people's jewellery," to which he repeated he did not know anything about any jewellery. He pleaded with the officers to stop beating him but they refused to do so and continued for some time. Whilst on the ground he begged the officers to tell him who was the owner of the

alleged property but instead one of the officers demanded that he stood up and another officer with gold teeth pushed him and instructed him to lie down at the back of the jeep. A short while after he felt someone grab him by his pants and the said officer with the gold teeth started to beat him several times on his buttocks with an object which felt like he was being “planassed” with a cutlass.

51. The Claimant testified that whilst the vehicle was travelling, he heard the officers laughing and joking. One of the officers told him that if he did not get the people’s things that they would light him up. Sometime later, the police vehicle stopped, a police officer opened the trunk and he felt someone holding him by the back of his pants and dragged him out of the jeep. One of the officers escorted him to a room at the Princes Town Police Station and he was made to sit on a chair.
52. In cross-examination, the Claimant admitted that he knew Mr Brandon Superville and Mr Shaquille Dube for 2 years as they lived in the Indian Walk area.
53. The Claimant relied on two medical reports dated 24 December 2013 to support his evidence that he was beaten by the police officers when he was in their custody on the 23 December 2013. Both medical reports only referred to the Claimant receiving burns to his back between 18% to 20%. The Claimant accepted in cross-examination that the medical reports did not indicate any information about him being beaten about his body.
54. The Claimant’s evidence was that he was not questioned by any police officer before he was physically shoved into a police vehicle. He was questioned about stolen jewellery on 2 occasions while in the police

vehicle by male police officers. On both occasions, he denied that he stole any jewellery. He was then taken to a lonely spot where he was beaten then questioned by a female police officer about the stolen jewellery. He again denied any knowledge. He was again beaten, kicked and cuffed by the police officers. Then he was taken to the Princes Town Police Station.

55. Based on the Claimant's version, he was arrested and detained by the police officers when he was pushed into the police vehicle. According to his evidence he was not beaten before he was put into the vehicle but after; he was not questioned about any stolen jewellery while he was on Fort George Road before he was placed into the police vehicle and he denied that he had stolen any jewellery on 3 occasions when he was questioned twice in the police vehicle and once in the densely forested area.
56. I have concluded that there are 2 reasons that WPC Ambrally's version of the events prior to the Claimant being arrested are more credible than the Claimant's. First, WPC Ambrally's evidence where she met the Claimant, what she asked him and his utterance incriminating himself in the burglary were unshaken in cross-examination. However, the Claimant's account where he saw the police officers on Fort George Road was undermined in cross-examination since unlike his pleaded case and evidence in chief he was adamant that he was not at Pooran Seepaul's house but at Brian St Paul's house.
57. Second, the Claimant's own contemporaneous documents namely the 2 medical reports dated 24 December 2014 undermined his version of the events that he was beaten. It was therefore more probable that he was not beaten and he was questioned about the stolen jewellery where he made

the utterance incriminating himself before he was taken into the police vehicle on Fort George Road.

58. The Claimant did not plead any particulars of lack of reasonable and probable cause on the part of WPC Ambrally when she arrested him.
59. At the time the Claimant was arrested WPC Ambrally had the following objective information: (i) she was in receipt of a report of burglary from Mr Garcia and Ms Alleyne; (ii) she had a description of the persons namely 2 men approximately 5 feet 5 inches tall, slim built with their face partially covered armed with cutlass and another man approximately 5 feet 7 inches tall, stocky built also armed with a cutlass and face covered. The men were of African descent and brown in complexion; and (iii) she had a statement from Shaquille Dube who told her "Officer me, Brandon and Jameson rob dem people, Jameson take the things to sell it" and a statement from Brandon Superville who stated after being cautioned "I only look out for Dube and Jameson" and a statement from the Claimant "Officer Brandon look out and me and Shaquille went and rob the people them".
60. In my opinion, WPC Ambrally had reasonable grounds based on these objective facts to form the genuine suspicion that the Claimant had committed the offences of breaking and entering and burglary. For these reasons, I have concluded that the Claimant was not wrongly arrested and detained on the 23 December 2013.

HAS THE CLAIMANT ESTABLISHED AN ABSENCE OF REASONABLE AND PROBABLE CAUSE BY WPC AMBRALLY TO CHARGE THE CLAIMANT FOR THE OFFENCES OF BREAKING AND ENTERING AND BURGLARY?

61. The Claimant did not plead any particulars of lack of reasonable and probable cause on the part of WPC Ambrally to charge the Claimant for the offences of breaking and entering and burglary.

62. The essential ingredients for a malicious prosecution claim as set out in **Clerk & Lindsell on Torts**¹⁷ are:

“In an action for malicious prosecution the claimant must first show that he was prosecuted by the defendant, that is to say, that the law was set in motion against him on a criminal charge; secondly, that the prosecution was determined in his favour; thirdly, that it was without reasonable and probable cause; fourthly, that it was malicious. The onus of proving every one of these is on the claimant. Evidence of malice of whatever degree cannot be invoked to dispense with or diminish the need to establish separately each of the first three elements of the tort.”

63. The test whether there is reasonable and probable cause has both subjective and objective elements. In **Harold Barcoo v the Attorney General of Trinidad and Tobago**¹⁸ Mendonca J (as he then was) quoted from the 1987 edition of the text *Civil Actions Against the Police* by R. Clayton Q.C. and Hugh Tomlinson Q.C., where the authors laid out the test as to whether there is reasonable and probable cause at page 147:

“(i) Did the officer honestly have the requisite suspicion or belief?

¹⁷ 20th ed. At page 1070, para 16:09

¹⁸ H.C.A. No. 1388 of 1989

- (ii) Did the officer, when exercising the power, honestly believe in the existence of the "objective" circumstances which he now relies on as the basis for that suspicion or belief?
- (iii) Was his belief in the existence of these circumstances based on reasonable grounds?
- (iv) Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?"

64. Mendonca J (as he then was) continued his explanation at page 6 as follows:

"The person who must entertain the requisite suspicion (belief) is the arresting officer (prosecutor). It is his mind that is relevant. The arresting officer in order to satisfy the subjective elements of the test must have formed the genuine suspicion in his own mind that the person arrested has committed an arrestable offence and he must have honestly believed in the circumstances which formed the basis of that suspicion. The objective test was put this way by Diplock L. J. in *Dallison v Caffery* [1965] 1 QB 348 (at page 619):

"The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause.""

65. There is no duty on the part of the officer to determine whether there is a defence to the charge but only to determine whether there is reasonable and probable cause for the charge (see **Herniman v Smith**¹⁹ per Lord Atkin,

¹⁹ [1938] AC 305 at page 309

“It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence, but whether there is reasonable and probable cause for a prosecution).”

66. The Privy Council in **Trevor Williamson v The Attorney General of Trinidad and Tobago**²⁰ at paragraphs 11-13, repeated the relevant law with respect to a claim for malicious prosecution as:

“11. In order to make out a claim for malicious prosecution it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to be found in **A v NSW [2007] HCA 10; 230 CLR 500**, at para 91:

“What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law -an ‘illegitimate or oblique motive’. That improper purpose must be the sole or dominant purpose actuating the prosecutor.”

12. An improper and wrongful motive lies at the heart of the tort, therefore. It must be the driving force behind the prosecution. In other words, it has to be shown that the prosecutor’s motives is for a purpose other than bringing a person

²⁰ [2014] UKPC 29

to justice: **Stevens v Midland Counties Railway Company (1854) 10 Exch 352, 356 per Alderson B and Gibbs v Rea [1998] AC 786, 797D**. The wrongful motive involves an intention to manipulate or abuse the legal system **Crawford Adjusters Ltd (Cayman) v Sagicor General Insurance (Cayman) Ltd [2013] UKPC 17, [2014] AC 366 at para 101, Gregory v Portsmouth City Council [2000] 1 AC; 426C; Proulx v Quebec [2001] 3 SCR 9**. Proving malice is a “high hurdle” for the claimant to pass: **Crawford Adjusters para 72a per Lord Wilson**.

13. Malice can be inferred from a lack of reasonable and probable cause – **Brown v Hawkes [1891] 2 QB 718, 723**. But a finding of malice is always dependent on the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence.”

67. It was not in dispute that the Claimant has proven that he was charged with the offences of breaking and entering and burglary and that the proceedings were terminated in the Magistrate’s Court when the Office of the Director of Public Prosecutions entered a nolle prosequi against the Claimant on the 26 June 2015. The onus was on the Claimant to prove that the arresting officer, WPC Ambrally did not have reasonable and probable cause to charge him for the aforementioned offences and that she instituted and carried out the proceedings against him maliciously.
68. Having concluded that WPC Ambrally had reasonable cause to arrest the Claimant the next step is to consider what additional information she had before she charged the Claimant.

69. WPC Ambrally testified that she was not one of the officers who interviewed the Claimant when he was brought to the Princes Town Police Station since she exited the office where the Claimant was put and she returned to the charge room and she did not enter the CID office while the Claimant was being interviewed.
70. According to WPC Ambrally, her next interaction with the Claimant was that she was informed that the Claimant was burnt and she and PC Marshall took the Claimant to the Princes Town District Health Facility. WPC Ambrally testified that they stayed with the Claimant until the ambulance took him to San Fernando General Hospital. They then followed him to the San Fernando General Hospital where he was attended to and warded.
71. While at the San Fernando General Hospital, the Claimant informed her of how he got burned and he gave her a statement explaining it which she read over to him in the presence of PC Marshall. She invited the Claimant to read it. He perused and signed it. She was not able to recall the Claimant's exact words but he stated that his shirt was soaked in methylated spirit in order to put on a wound on his right leg and while in CID office, it caught fire from a scented candle. After the Claimant was warded, she and PC Marshall were then relieved from the hospital guard.
72. In cross-examination, WPC Ambrally confirmed that she took a statement from the Claimant while he was at the San Fernando General Hospital. She was unable to recall the time she took the statement but she said that she took it when he was waiting to be attended to. She admitted that she did not ask any of the doctors or nurses whether the Claimant was in a condition to give a statement. She testified that she enquired from the

Claimant whether he was okay to give a statement before she took it but she did not state this in the statement. She said that she did not caution the Claimant again at this time as he was already cautioned when he was arrested. In cross-examination, she also testified that she was advised by her seniors not to visit the Claimant at the Hospital.

73. WPC Ambrally annexed the statement which she took from the Claimant to her witness statement²¹. According to the statement which was recorded by her on the 24 December 2013 at the Accident and Emergency Department at the San Fernando General Hospital, the Claimant stated in the CID room while he was being interrogated by other officers “I tell dem dat me, BRANDON and SHAQUILLE went in de old lady house. BRANDON was the lookout man and me and de next man gone in de house and rob de people and dem. I see de officer dem write something in ah big book and the dey tell meh to sit down on ah chair.”
74. WPC Ambrally testified that the Claimant stayed at the San Fernando General Hospital and was discharged in January 2014 in police custody. He was taken back to the Princes Town Police Station where she proffered the charge of burglary against him. After being charged, the Claimant was taken back to San Fernando Police Station and kept in a cell until he was taken to the Princes Town Magistrates’ Court the next day. On 6 January 2014, the Claimant appeared before the Magistrate and he was granted his own bail. The matter was then adjourned to 5 June 2014. The Director of Public Prosecution then filed a notice of discontinuance against the Claimant on 26 June 2015.

²¹ Exhibit A.A 3” of WPC Ambrally’s witness statement

75. WPC Ambrally testified in cross-examination that Mr Brandon Superville and Mr Shaquille Dube were charged before the Claimant was charged. She could not recall the exact amount of days the Claimant was warded at the San Fernando General Hospital but when he was released, she proffered the charge against him. She could not recall if she took a statement from PC Marshall or cited any of the officers who were in the CID office when the Claimant was charged.
76. The Claimant testified that upon arrival at the Princes Town Police Station, an officer opened the rear of the vehicle and he felt someone grab him by the back of his pants and dragged him out of the van. The officers surrounded him. A big strong red-skinned officer passed in front of him and hit him one hard cuff in his belly, which caused him to cringe. He was ordered to stand up and a fat officer sitting at the front and other side of the desk asked him in a very loud and aggressive manner, "Where is the people's jewellery" to which he again replied that he knew nothing about any jewellery.
77. Whilst in pain, the officers at the Princes Town Police Station further interrogated him. A fat officer informed him that if he did not speak that he would have to take a nearby bottle with gas and throw the gas on himself. He began to comply but was stopped by the said officer. Another officer hit him a hard cuff in his belly. He felt dizzy and collapsed. The officer with the gold teeth had a cutlass in his hand, ordered him to move across the side of the table closer to him and was shouted at by the officer saying "Put your hand on the table" where he was sitting. Before he could do so, the officer shouted at him to put his hand on the table, pull down his pants, bend, and cock his bottom over. In extreme fear and shame, he pulled down his pants to his knees and the officer started to beat him with

the cutlass on his buttocks. When he started to scream and bawl, he observed one of the other officers rushed and closed the door of the room in which he was being beaten. He began to feel weak, dizzy, and collapsed. Another officer shouted at him to get up and place his hands on the table again, to which he complied. He continued to be “planassed” on his back and buttocks.

78. He then observed an Indian officer with a white bottle in his hand containing a liquid. He felt the liquid being thrown down his back and buttocks. When the liquid touched the area where he received the blows, it began to burn him so badly that he began to scream and bawl at the top of his voice. During this time, he felt one of the officers at his side touch him with an object and he felt a very strong electric shock running throughout his body and he fell to the ground in pain. He was ordered to stand up but he was unable to do so and an officer dragged him up.
79. After some time, he heard a “scratch thing” which sounded like a cigarette lighter being lit behind his back close to his buttocks. He heard a “voop” and suddenly felt like his butt was on fire. He felt a hot burning sensation on his back and then realised his body was on fire. None of the officers came to his assistance while he was on fire. One officer attempted to spin him but realised he could not move because his pants was down by his knees and the officers were surrounding him. One of the officers then suddenly pushed him to the ground and began stamping on him. Eventually, the flames were extinguished and he lay on the ground sideways. One of the officers lifted him and he then held on to the table in a crouched position because of the intensity and the unbearable nature of the pain. He heard the officers laughing at him saying that he was smelling stink like a burnt “manicou.”

80. In cross-examination, the Claimant testified that he did not know what the electric shock was but confirmed his body was on fire at the time he heard what sounded like a cigarette lighter. He was stamped on for a while and when the officer realised he could not out the fire, he got a liquid, [sweet drink] and threw it on him. He agreed he did not indicate in his witness statement that the officer threw a liquid on him to put out the fire on him.
81. According to the Claimant, he was kept in the room for what seemed like hours after he was beaten and burnt and it was only after pleading he was taken to the Princes Town Health Facility where he was attended to and transferred to the San Fernando General Hospital. One of the officers handed him \$15.00 and told him to travel home after his release from the hospital. At the San Fernando General Hospital, he was warded for 14 days and received full medical treatment.
82. The Claimant testified that at no time during the interrogation was he told of his rights and privileges nor was he cautioned or informed of his right to any attorney or friend.
83. According to the Claimant, on Sunday 5 January 2014 when he was discharged from the hospital, he was taken to the Princes Town Police Station. He was visited by attorney at law Shaun Tikasingh, who made representations on his behalf and he was transferred to the San Fernando Police Station. During his brief stay at the Princes Town Police Station, two officers involved in the beating and burning who requested that he sign a document and subject himself to an interview approached him. He declined.

84. In cross-examination, the Claimant stated that he never gave WPC Ambrally any statement at the San Fernando General Hospital. Counsel for the Defendant read out a part of the statement to him. He maintained that this was not his statement. The Claimant was shown the statement which was annexed to WPC Ambrally's witness statement. He agreed that the signature on the statement was his but he still denied that he had signed the statement.
85. There were 2 different versions from the evidence about the statement which WPC Ambrally said she obtained from the Claimant at the San Fernando General Hospital. In my opinion although the signature on the statement was the Claimant's, it was not probable that the Claimant provided the information contained therein for the following reasons. First, it was not plausible that the Claimant who had suffered at least 20% burns on his body, in severe pain while waiting for treatment at the Accident and Emergency Department at the San Fernando General Hospital would have recalled the extent of the details in the statement. Second, WPC Ambrally's own admission that she did not consult with the medical staff at the Hospital before she caused the Claimant to sign the Statement calls into question the propriety of the contents of the statement. Third, the alleged incriminating statements, which WPC Ambrally recorded that the Claimant told her, were statements which she said he made to the officers in the CID office. However there was no evidence from WPC Ambrally that this alleged confession which he said he made to the officers in the CID office was recorded in a statement or the Station Diary for the Princes Town Police Station and fourth there was no evidence from any of the officers who were in the CID office that the Claimant had made such statements in the CID office during his interrogation where WPC Ambrally was not present.

86. Therefore at the time the Claimant was charged WPC Ambrally had the following objective information: (i) the report from Mr Garcia and Ms Alleyne; (ii) the incriminating statements from Mr Shaquille Dube, Mr Brandon Superville and the Claimant; and (iii) both Mr Shaquille Dube and Mr Brandon Superville for the offences of breaking and entering and robbery on the 27 December 2013.
87. The statement which WPC Ambrally had asserted she had taken was not reliable given the circumstances under which it was taken. She did not have any positive identification of the Claimant by Mr Garcia and/or Ms Alleyne since the statements she had from the victims were that the 2 slim men's faces were partially covered and the stocky built man's face was covered. Further, Shaquille Dube's incriminating statement was that the Claimant had stolen the items to sell. However, WPC Ambrally had no evidence that the Claimant's person was searched on Fort George Road or that his home, which according to the Claimant was a few houses away, was searched to find any trace of the alleged items which were stolen. In my opinion this was a reasonable step which ought to have been taken by WPC Ambrally since the information which she had, was that the items were stolen by the Claimant to sell it.
88. In my opinion, WPC Ambrally could not have formed the opinion based on the aforesaid objective information that she had reasonable and probable cause to charge the Claimant and launch a prosecution of the Claimant for the offences of breaking and entering and burglary.

WAS WPC AMBRALLY ACTUATED BY MALICE WHEN SHE CHARGED THE CLAIMANT?

89. The Claimant pleaded the following particulars of malice:
- a. WPC Ambrally ought to have known that the Claimant did not commit the offence and there was no basis for the charge.
 - b. The police fully knew or ought to have known that they had no or no reliable evidence against the Claimant to establish or implicate him in the commission of the offence.
 - c. WPC Ambrally did not believe that the Claimant had committed any offence which can be inferred by acts, the fact that they failed to attend court on numerous occasions to evidence their conviction.
90. The Claimant was cleared of the charge on the basis that the prosecution had absolutely no evidence against the Claimant to offer.
91. In the Privy Council decision of **Williamson** at paragraph 11, the Board, referred to **A v NSW**²² and set out a definition of what is required for proof of malice as follows:
- “What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than a proper invocation of the criminal law – an ‘illegitimate or oblique motive’. That improper purpose must be the sole or dominant purpose actuating the prosecutor.”
92. At paragraph 12, their Lordships stated that an improper and wrongful

²² [2007] HCA 10,

motive lies at the heart of the tort and this improper motive must be the driving force behind the prosecution. Their Lordships also cautioned that “proving malice is a “high hurdle” for the claimant to pass.”

93. In my opinion, the Court can impute malice in the instant matter since WPC Ambrally had no reliable evidence to charge the Claimant for the two offences and by doing so she set in motion a prosecution which lasted from January 2014 to June 2015.

IS THE DEFENDANT LIABLE FOR THE ASSAULT AND BATTERY OF THE CLAIMANT?

94. **Clerk and Lindsell on Torts**²³ 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.”

95. **Clerk and Lindsell on Torts**²⁴ 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 forms. Thus, so long as it is direct, anything which amounts to a blow, whether inflicted by hand, weapon or missile, is a battery.”

²³ 22nd Edition at 15-12,

²⁴ 22nd Edition, 15-09

96. The Claimant pleaded that he was beaten by the officers of the Princes Town Police Station both before and at the police station. He also pleaded that the officers caused him to suffer burns on his body. He pleaded the following particulars of injury:

“Laceration to the Claimant’s head

Laceration to the Claimant’s lip

Welds on back

Welds on buttocks

Swollen head

First Degree Burns to Back

First Degree Burns to Buttock

First Degree Burns to Penis

Balantitis and Phimosis resulting in circumcision

Contusion and bruises about his body

Extensive pain and tenderness to the back and buttocks

Tenderness and swelling to the face and back and buttocks

Extensive scars over the body

Frequent blackouts

He had continuing injuries and is receiving medical treatment

Depression

Nervousness

Anxiety attack”

97. The Claimant and Defendant gave differing versions of the assault and battery of the Claimant.

98. I have already set out in great detail the Claimant’s version of the assault and battery before and at the Princes Town Police Station. In summary, the Claimant testified that that he was beaten and burnt by the officers. At

paragraph 10 of his witness statement the Claimant stated that he was dragged out of the police vehicle by officers and one officer cuffed him in his stomach. At paragraph 11, he stated that he was kicked about his body including his chest, back, feet and face and dragged again by officers. He stated that he was stamped all over his body for “a long period of time, more than 10 minutes”. At paragraph 15, the Claimant said that the officer with the gold teeth beat him several times on his buttocks with an object. He said he was planassed with a cutlass for 5 to 6 minutes. At paragraph 19, he said the big red skin officer hit him one hard cuff in his belly. At paragraph 21, the Claimant said that another officer cuffed him in his belly again. At paragraph 22, he stated that he was beaten with a cutlass a second time. He was hit on his bottom several times and that lasted more than 10 minutes. At paragraphs 24 to 28, the Claimant stated that an officer threw a liquid on him and set him on fire and at paragraph 28, the Claimant states that he was stamped all over his body, his chest, back, side and that the officer threw sweet drink on him. The Claimant testified that that he told his mother that officers terrorized him, but he did not call his mother as a witness.

99. To support his assertion the Claimant relied on the medical reports which he annexed as “J.J.3” and “J.J. 4” to his witness statement. Both reports are dated 24 December 2013. The medical report annexed at “J.J.3” stated that the Claimant received “first degree burns to his back of approximately 20%” and “J.J.4” stated “burns to back of approximately 18%”.
100. In cross-examination the Claimant testified that he was beaten plenty times on 23 December 2013 that he was close to death. The Claimant accepted in cross-examination that the medical reports he produced did not show any injuries to his body besides the burns.

101. The Defendant relied on the evidence of WPC Ambrally to support its denial of the Claimant's version. WPC Ambrally testified that when she and other officers visited Fort George Road Indian Walk they met the Claimant walking along the roadway. She caused the police vehicle to stop and she alighted from said vehicle and approached him in the company of other officers and identified herself by showing her Trinidad and Tobago Police Identification Card. She observed the Claimant was bareback, he had a jersey wrapped on his right leg and he wore a three-quarter pants. The Claimant was arrested, informed of the reason for his arrest, cautioned, informed of his legal rights and privileges. At that time, the Claimant took the jersey from his right leg and covered his body.
102. In cross-examination, WPC Ambrally confirmed that when she saw the Claimant at Fort George Street he had a jersey wrapped around his right leg, just above the knee. After she told him of his legal rights and privileges, the Claimant put on the jersey and she noticed a bandage on his right knee from where he removed the jersey and the jersey had a wet spot on it.
103. According to WPC Ambrally, the Claimant was not placed in the same vehicle as her. Both police vehicles arrived at the Princes Town Police Station at the same time which was 11:40am. WPC Ambrally stated in cross-examination that there were two vehicles and there were nine officers involved in the operation. However, she was unable to recall how many officers were in the vehicle she was in. She stated that after the Claimant was arrested they did not stay out for any long period as he was taken to the police station and that all the officers returned to the police station at the same time and the Claimant was taken to the CID office.

104. WPC Ambrally testified that the Claimant was taken to the CID office and placed in Sergeant Reid's office where he was interviewed by other officers. According to WPC Ambrally, she exited the CID office and returned to the charge room and at no point, while he was being interviewed she entered the CID office. In cross-examination, WPC Ambrally stated that when she took the Claimant into the CID office she was unable to see from the CID office whether there was a lit candle in Sergeant Reid's office. She also admitted that she did not know what happened in the CID office as she did not return while the Claimant was there and there were 6 officers in the CID office with the Claimant.
105. According to WPC Ambrally, after a short while, she received instructions that the Claimant was burnt and she was instructed to take him to the Princes Town Health Facility. She received no further information about how the Claimant was burned at that time. She took possession of the Claimant's jersey and placed it into an evidence bag along with the said candle that was packaged separately. He was given another jersey to wear.
106. In cross-examination, WPC Ambrally testified that it was not recorded in the Station Diary when she returned into the CID office. She stated that she was informed by the Sergeant that an incident occurred. When she returned to the CID office she saw the candle on the Sergeant's desk. It appeared to have been lit and put out, as the wick was black. She stated that since she was not in the CID office when the Claimant was burnt she was unable to state if the candle was involved in the Claimant being burnt. She was also unable to indicate if the candle was removed into the CID office and then replaced in the Sergeant's office. She said they did not keep lighted candles in the CID office all through the year. The lighted candle was in the Sergeant's office which was a room adjacent to the CID office.

107. WPC Ambrally stated in cross-examination that she picked up the candle and the Claimant's jersey and placed them into separate evidence bags. WPC Ambrally stated that although her witness statement did not indicate how the Claimant was burnt, she was informed that it was caused by a candle. She said she did not enquire at that time how the Claimant was burnt and that WPC Nicest, the forensic investigator took possession of the jersey and candle to be analysed. She never enquired at the time of taking him from CID office as to how he got burnt. The results were revealed in the criminal matter at the Princes Town Magistrates' Court but she was unable to recall what the report said about the jersey.
108. According to WPC Ambrally, she and PC Marshall then took the Claimant to the Princes Town District Health Facility. They stayed with the Claimant until the ambulance took him to San Fernando General Hospital. They then followed him to the San Fernando General Hospital where he was attended to and warded.
109. While at the San Fernando General Hospital, the Claimant informed her of how he got burned and he gave her a statement explaining it, which she read over to him in the presence of PC Marshall. She invited the Claimant to read it. He perused it and signed same. She was unable to recall the Claimant's exact words but he stated that his shirt was soaked in methylated spirit in order to put on a wound on his right leg and while in CID office, it caught fire from a scented candle. After the Claimant was warded, she and PC Marshall were then relieved from the hospital guard.
110. I have concluded that the Claimant's version of the brutal assault which he received by the officers was not credible since his medical reports did not

support his contention. In my opinion, it was more probable that if the Claimant had suffered the extent of the beating, which he described, this would have been reflected in the medical reports but they were silent.

111. With respect to the burns which the Claimant suffered in the CID office, in my opinion the Claimant's version of how he sustained the burns at the hands of the police officers who were in the CID Office was more probable for the following reasons. First, there was no evidence from WPC Ambrally to support the Defendant's version of how the Claimant was burnt since by her own admission, she was not present in the CID office when the Claimant was burnt. She saw him before and after he received the burns. Second, there was no evidence to challenge the Claimant's version of how he was burnt. Third, there was no evidence that the Claimant's jersey, which she said she placed in a separate evidence bag and tested by a forensic analyst was soaked with methylated spirit. Fourth, the circumstances as outlined from WPC Ambrally's evidence supported the Claimant's version. WPC Ambrally stated that she left the Claimant in the CID office with 6 police officers; the CID office is adjoining the Sergeant's office; when she placed the Claimant in the CID office she was unable to see if there was a lit candle in his office but when she returned to the CID Office she was told the Claimant suffered burns and she saw a candle which was put out since the wick was black in the Sergeant's office. In my opinion, it was inherently more probable that the 6 officers who were in the CID office with the Claimant used the candle which caused the burns to the Claimant.

IF LIABILITY HAS BEEN ESTABLISHED WHAT IS THE APPROPRIATE MEASURE IF DAMAGES TO BE AWARDED?

112. There are two aspects of the Claimant's damages to be assessed namely his claim for malicious prosecution and for the assault and battery.

Malicious prosecution

113. 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 reparation²⁵."
114. Apart from pecuniary loss, the relevant heads of damages²⁶ 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.

Aggravated Damages

115. 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**²⁷, 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**²⁸ 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

²⁵ Livingstone v Raywards Coal Co. (1880) 5 App.Cas.25 at 39

²⁶ Mc Gregor on Damages 17th ed, 2003 paras. 8-004 to 38-005

²⁷ Civ App. No. 159 of 1992, at page 9

²⁸ [1998] QB 498

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 highhanded, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution.

116. It was submitted on behalf of the Claimant that he is entitled to damages for false imprisonment and malicious prosecution and that an uplift should be awarded for aggravating factors. Counsel submitted that the aggravating factors were: (a) the Defendant did not have evidence of the relevant charges laid against the Claimant, as is evident by the discontinuance of the matter by the Director of Public Prosecution; (b) the Claimant was not cautioned for any offence or informed of his constitutional rights and privileges; (c) the Claimant was not informed of the reason for his arrest; (d) the Claimant was not informed of the offences for which he was being charged until he was given his charge papers; (e) the Claimant endured immense pains and torture from officers when he was arrested; (f) the Claimant endured the embarrassment, anxiety and stress from attending the Princes Town Magistrate's Court for offences which he did not commit; (g) the Claimant, prior to the incident was a man of good character, he continues to endure the embarrassment, anxiety and stress from the injuries inflicted upon him by the officers; (h) Claimant was unable to work and that he had lost his girlfriend and other forms of recreation as a result of the injury; (i) the Claimant was in excruciating pain at the time he suffered the burns.

117. Counsel for the Claimant relied on the cases of **Mustapha Ghanny v PC Dev Ramdhin & The Attorney General of Trinidad and Tobago**²⁹; **Harricharan v The Attorney General of Trinidad and Tobago**³⁰ ; **Alphie Subiah v The Attorney General of Trinidad and Tobago**³¹; **Charran Francis v The Attorney General of Trinidad and Tobago**³² ; **Nigel Morales v The Attorney General of Trinidad and Tobago**³³; **Azard Ali v The Attorney General of Trinidad and Tobago**³⁴ ; **Emraan Ali v The Attorney General of Trinidad and Tobago**³⁵; **Jamol Dunbar v The Attorney General of Trinidad and Tobago**³⁶; **The Attorney General of Trinidad and Tobago v Kevin Stuart**³⁷; **Indra Samuel and or v The Attorney General of Trinidad and Tobago**³⁸; **Anisha Raffick v The Attorney General of Trinidad and Tobago**³⁹; **Michael Douglas v The Attorney General of Trinidad and Tobago**⁴⁰; **Keon Quow v The Attorney General of Trinidad and Tobago**⁴¹; **Joel Walker v The Attorney General of Trinidad and Tobago**⁴²; **Onnell Dyer v The Attorney General of Trinidad and Tobago**⁴³; **Marvin Pascall v The Attorney General of Trinidad and Tobago**⁴⁴; **Mark Huggins v The Attorney General of Trinidad and Tobago**⁴⁵ and **Daryl Mahabir v The Attorney General of Trinidad and Tobago**⁴⁶.

²⁹ CV 2015-01921

³⁰ HCA 137 of 2005

³¹ Civ Appeal No 10 of 2005

³² HCA 518 of 2003

³³ CV 2008-02133

³⁴ CV 2012-04736

³⁵ CV 2012-02695

³⁶ CV 2017-02511

³⁷ Civ P 162 of 2015

³⁸ CV2014-00608

³⁹ CV2017-01077

⁴⁰ CV2015-02892

⁴¹ CV2015-02893

⁴² CV2015-03439

⁴³ CV 2009-04698

⁴⁴ CV2015-03207

⁴⁵ CV2015-03208

⁴⁶ Cv2017-00460

118. Counsel for the Defendant relied on the cases of **Bernard Baptiste v The Attorney General of Trinidad and Tobago**⁴⁷; **Bisham Balgobin v The Attorney General of Trinidad and Tobago**⁴⁸; **Darren Mc Kenna v The Attorney General of Trinidad and Tobago**⁴⁹; **Deosaran Paladhari v The Attorney General of Trinidad and Tobago**⁵⁰ and **Felix Hyndaman v The Attorney General of Trinidad and Tobago**⁵¹. Counsel for the Defendant submitted that reasonable compensation for the Claimant is between the range of \$50,000.00 to \$100,000.00.

119. More recently, Jones JA in the local Court of Appeal decision of **Darrell Wade v the Attorney General of Trinidad and Tobago**⁵² and **Jason Superville v The Attorney General of Trinidad and Tobago**⁵³ provided the following guidance on the award of general damages in matters of false imprisonment, malicious prosecution and assault and battery. At paragraph 10 it was stated:

10. The assessment of damages is not an exact science. No two sets of facts are exactly alike nor are the effects of the actions complained of the same for each victim. In addition, when considering earlier cases the assessor must make allowance for the decline in the purchasing power of the dollar as a result of inflation. The practice of simply applying the formula contained in The Lawyer for updating older decisions was discouraged in Bernard v Quashie. According to de la Bastide CJ at page 7:

⁴⁷ HCA 3617 of 2001

⁴⁸ CV2009-03089

⁴⁹ CV2006-03114

⁵⁰ CV2007-01747

⁵¹ HCA T71 of 1999

⁵² Civ Appeal 172 of 2012

⁵³ Civ Appeal 173 of 2012

“...What I would say, however, is that any such formula should be used, with some care. They should not be regarded as simple mathematical solutions to the difficult problem of assessing damages. There are other guides apart from indices of this sort.

The fact of the matter is that damages are being assessed almost on a daily basis. And therefore, in the course of time the amounts awarded for injuries of the same type do increase incrementally over years and one has got to be guided as well not only by awards made several years before converted in accordance with some formula, but also one must have regard to other comparable contemporaneous awards. There is no single simple solution. It is a complex exercise which cannot and should not be reduced to a simplistic mathematical calculation.”

120. In the instant case, the Claimant was under police guard from the 23 December 2013 from his arrest until the 6 January 2014 when he appeared before a Magistrate and he was granted bail. A total of 14 days. His prosecution lasted from 6 January 2014 to 26 June 2015, approximately 18 months.

121. From the authorities which have been referred to me by Counsel for the Claimant and the Defendant I have found that the more applicable cases are:

- (i) **Deryck Warner v Assistant Superintendent Clarke & Anor**⁵⁴. On 12 February 2016 the Claimant was awarded \$200,000.00 in general damages for false imprisonment and

⁵⁴ CV2014-00542

malicious prosecution. The Claimant was charged with the offences of possession of a firearm and ammunition and 6 counts of shooting with intent to cause grievous bodily harm. The charges were dismissed after 3.5 years without the prosecution being in any position to proceed. The period of detention from the time he was arrested to the time of his charge was approximately 13 days.

- (ii) **Winston Blades and Ors. v The Attorney General of Trinidad and Tobago.** On the 19 July 2017 one of the Claimants, Scipio was awarded the sum of \$60,000.00 as damages in a claim for malicious prosecution. He was detained for a period of less than two weeks.

- (iii) **Mark Huggins v The Attorney General of Trinidad and Tobago⁵⁵.** On the 29 January 2018, the Claimant was awarded \$225,000.00 in general damages and \$30,000.00 in exemplary damages. 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 3½ hours. He was housed in a cell about 10 feet x 10 feet with seven other men while at the Remand Yard Prison with only a bucket for a toilet.

- (iv) **Joel Walker v The Attorney General of Trinidad And Tobago⁵⁶.** On the 9 March 2018, I awarded the Claimant general damages in the sum of \$220,000.00 for wrongful arrest, malicious prosecution and wrongful imprisonment. The Claimant was

⁵⁵ CV2015-3208

⁵⁶ CV2015-03439

imprisoned for 56 days. The prosecution lasted for 3 months before the charges were dismissed.

(v) **Osa Chima v The Attorney General of Trinidad and Tobago**⁵⁷.

On 7 May 2018, I awarded the Claimant \$150,000.00 in general damages for false imprisonment and malicious prosecution. The Claimant was charged with the offences of possession of a firearm and ammunition without a licence and possession of marijuana on 20 February 2010. The charges were dismissed on 30 October 2012. He spent 3 days 13 hours in the police station cell after being arrested, and approximately 3 months in remand yard after being denied bail.

(vi) **Anisha Raffick (aka Lisa Raffick) v The Attorney General of Trinidad and Tobago**⁵⁸.

On 10 October 2018, I awarded the Claimant \$220,000.00 in general damages for false imprisonment and malicious prosecution. The Claimant was charged for possession of a dangerous drug for the purpose of trafficking on 22 November 2013 and the charge was dismissed on 22 October 2015. She was wrongly imprisoned for 11 days.

(vii) **Daryl Mahabir v The Attorney General Of Trinidad And Tobago**⁵⁹.

On the 1 April 2019, I awarded the Claimant general damages assessed in the sum of \$140,000.00 with interest at the rate of 2.5% per annum until judgment. This sum included an uplift for aggravated damages. The Claimant was charged

⁵⁷ CV2016 - 03568

⁵⁸ CV2017-01077

⁵⁹ CV2017-00460

for using obscene language in a public place and resisting arrest. The prosecution lasted for 16 months. His period of detention was for 5 days where he was kept in filthy cells at the Police Station and Remand Yard. He sought damages for wrongful arrest, false imprisonment and malicious prosecution.

- (viii) **Jamol Dunbar v The Attorney General of Trinidad And Tobago**⁶⁰ This was a decision of 2 April 2019. The Claimant was arrested on 11 August 2014. On 13 August 2014, he was taken to the Princes Town Magistrates' Court and was denied bail because the Magistrate indicated that she needed information from Interpol since he is a foreign national. He was detained at the prison in Arouca where he remained until his release on 16 October 2014. Whilst he was granted bail on 28 August 2014, he was unable to access the bail. In that case the court found that the Claimant was entitled to be compensated for his false imprisonment prior to being brought before the Magistrates' Court (a period of approximately two days) and on his claim for malicious prosecution. He is also entitled to compensation for the entire duration of his detention while on remand up to his eventual release from prison on 16 October 2014 (a period of approximately sixty-five days). The court made an award of \$230,000.00 in general damages for wrongful arrest, false imprisonment and malicious prosecution inclusive of an uplift for aggravation.

⁶⁰ CV 2015-02511

122. Based on the aforesaid cases, an appropriate range for the Claimant's damages for malicious prosecution (inclusive of aggravated damages) is between \$150,000.00 and \$220,000.00.
123. In my opinion, a reasonable award for the Claimant which includes an award for aggravated damages is \$190,000.00.

Assault and battery

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

Special Damages

125. The Claimant pleaded the following particulars of special damages:
- a) Travel from Home to the San Fernando General Hospital
 - b) Cost of Legal representation in the Magistrate's Court
 - c) Cost of travel to and from court
 - d) Medication
 - e) Rental accommodation
 - f) Loss of earnings
 - g) Loss of future earnings
126. No award is made to the Claimant for special damages since the Claimant did not plead any specific sums as his loss and he did not provide any evidence.

General damages

127. Counsel for the Claimant did not submit the sum the Court should award as general damages for the assault and battery but Counsel referred the Court to the learning in **Sean Wallace v The Attorney General of Trinidad**

and Tobago⁶¹ ; **Anino Garcia v The Attorney General of Trinidad and Tobago**⁶²; **Dwain Kirby Henry v The Attorney General of Trinidad and Tobago**⁶³ and **Raffick Mohammed v Myra Bhagwansingh**⁶⁴. Counsel also argued that an uplift for aggravating features also be awarded.

128. Counsel for the Defendant relied on the cases of **Dexter Sobers v The Attorney General of Trinidad and Tobago**⁶⁵; **Nyeem Mohammed and or v Sarju Singh**⁶⁶; **Bernadine v The Attorney General of Trinidad and Tobago**⁶⁷; **Ali v The Attorney General of Trinidad and Tobago**⁶⁸; **Ricardo Youk-See and ors v The Attorney General of Trinidad and Tobago**⁶⁹ and **Sanjay Armoogam v Gulf City Limited v The Attorney General of Trinidad and Tobago**⁷⁰. Counsel for the Defendant argued that a reasonable range of damages for an award for the assault and battery is between \$30,000.00 to \$50,000.00.

129. 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**⁷¹ 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;

⁶¹ HCA 4009 / 2008

⁶² CV 2009-03273

⁶³ CV 2008-03079

⁶⁴ HCA NO S-626 OF 1995/ CV2015-01034

⁶⁵ CV2008-04393

⁶⁶ CV 2010-03904

⁶⁷ CV2010-02956

⁶⁸ CV 2012-02695

⁶⁹ CV2011-04459

⁷⁰ CV2010-02200

⁷¹ (1965) 7 WIR 491

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

130. According to the medical reports dated the 24 December 2013 the Claimant suffered burns to his back of between 18 to 20%.

The nature and gravity of the resulting physical injuries

131. The Claimant testified that as a result of the incident, he has extensive scars over his body, he suffered frequent black outs, depression, nervousness and anxiety attack. There was no medical evidence to support the Claimant's evidence of depression, nervousness, anxiety attacks and frequent blackouts and for this reason, I attached no weight to his assertion. On the other hand, in light of the 2 medical reports from the Claimant it is reasonable to conclude that he suffered scarring as a result of the burns.

Pain and suffering

132. The Claimant testified that he was in unbearable pain when his body was burning. He remained feeling this pain for hours until he was taken to the Princes Town Health Facility where he was attended to and then transferred to the San Fernando General Hospital where he spent 14 days before he was discharged. His evidence on the extent of the pain he suffered as a result of the burns was unchallenged in cross-examination.

Loss of Amenities

133. The Claimant testified that he suffered loss of the following amenities as a result of the actions of the officers. He frequented the beaches in bathing trunks but he has not been able to do so because he is embarrassed with the scars. He has not been able to walk about bare back because of the scars. He had an intimate relationship with his girlfriend and he is unable to continue it because of the scars on his intimate pelvic area. He liked to walk a lot, but is unable to walk now, as he experiences dizzy spells and black out which are caused by this incident. He has not been able to sleep properly at night because he experiences severe headaches. He experiences nightmares about the beatings and burnings.

Loss of pecuniary prospects

134. There was also no evidence from the Claimant that the injuries he sustained has adversely affected his pecuniary prospects. In the absence of any evidence, I concluded that there was no loss of pecuniary prospects for the Claimant.
135. In determining the measure of general damages to award to the Claimant, I took into account that the injuries to the Claimant were serious. The medical evidence supported his assertion that he suffered burns of 18% to 20 % of his back and he had 1 surgery. I also considered that the pain he endured on the day of the incident was excruciating given the nature of the injuries and that he spent 14 days at the San Fernando General Hospital. His pain would have decreased over the period of time. However, there was no evidence on the loss of amenities and pecuniary prospects.
136. I also considered the judicial trends in:

- (i) **Lloyd v Poon Tip's Ltd**⁷². This was a decision delivered by the Court of Appeal on 16 December 1968. The Claimant suffered burns over 20% of the body; most serious burns on legs and feet. He was awarded \$137,583 in general damages- updated to May 2019- \$82,687.23
- (ii) **Superville v The Attorney General of Trinidad and Tobago**⁷³. A decision delivered by Master Alexander on 20 May 2013. The Claimant was assaulted by police officers and was awarded general damages of \$65,000.00 for assault and battery and \$40,000.00 for false imprisonment. He was diagnosed as sustaining soft tissue injuries. His specific injuries included lacerations to his face and body, welt marks and bruises about the body, extensive pain and tenderness to the face and back, swelling and tenderness to several areas of the body as well as extensive scarring. On appeal, this amount was increased to \$130,000.00.
- (iii) **Sanjay Armoogam v Gulf City Limited v The Attorney General of Trinidad and Tobago**⁷⁴. On 17 December 2014, the Claimant was awarded \$150,000.00 in general damages for burns sustained to his body. The Claimant suffered first and second degree burns to his face, chest, neck, arms, head and scalp, burns to his eyes with loss of visual acuity and field. There were also burns to the periorbital skin with loss of lashes and eyebrows, blindness for two days, burns to

⁷² CV 15/68

⁷³ CV2011-01152

⁷⁴ CV2010-02200

fingers and hands which resulted in scarring. The permanent partial disability was assessed at 36%.

- (iv) **Raffick Mohammed v Myra Bhagwansingh**⁷⁵. On 31 January 2019, Master Alexander awarded the Claimant \$385,000.00 for assault and battery inclusive of aggravated damages following an acid attack on him by the Defendant. He sustained burns to 16% of the surface area of his body, more particularly the face, neck, upper left arm and back. The impact of his injuries was not limited to the area drenched with the acid, as there was full thickness and superficial burns. There was scarring over several different areas of the Claimant's body, from surgical procedures and skin harvesting. He also suffered gross scarring of the face, upper trunk and upper extremities, closure of the left nostril, incomplete closure of the left ear, distortion of the mouth and inability to extend the left elbow. In comparative analysis of cases in assessing damages, Master accepted the Defendant's submissions that the Claimant's injuries were outside the realm of many local authorities.

137. The injuries the Claimant suffered were similar to the **Lloyd** case but I have decided against applying the sum from the updated figure since I acknowledge the comments of de la Bastide CJ in **Bernard v Quashie**⁷⁶ that the practice of simply applying the formula contained in the Lawyer for updating older decisions ought to be discouraged. At page 7 in **Bernard v Quashie** de la Bastide CJ stated:

⁷⁵ HCA NO S-626 OF 1995/ CV2015-01034

⁷⁶ Civil Appeal 159 of 1992

“...What I would say, however, is that any such formula should be used, with some care. They should not be regarded as simple mathematical solutions to the difficult problem of assessing damages. There are other guides apart from indices of this sort.

The fact of the matter is that damages are being assessed almost on a daily basis. And therefore, in the course of time the amounts awarded for injuries of the same type do increase incrementally over years and one has got to be guided as well not only by awards made several years before converted in accordance with some formula, but also one must have regard to other comparable contemporaneous awards, there is no simple solution. It is a complex exercise which cannot and should not be reduced to a simplistic mathematical calculation.”

138. The award in **Raffick Mohammed** is the most recent. While the extent of the burns in both **Raffick Mohammed** and the instant case are similar, I considered that the scarring, the extent of the pain and suffering and loss of amenities in the **Raffick Mohammed** case to be far more significant than the instant case. The percentage of burns over the body of the Claimant was a little higher than that in the case of **Sanjay Armoogam**. Given the limited learning in guiding the Court in setting a range for the instant case, in my opinion, an appropriate range of damages for the Claimant is between \$ 130,000.00 to \$ 200,000.00 and a reasonable award which includes an uplift for aggravated damages is \$150,000.00

Exemplary Damages

139. Exemplary damages may be awarded where there is the presence of outrageous conduct disclosing malice, fraud, insolence and cruelty. In

Rookes v Barnard,⁷⁷ 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.

140. 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**⁷⁸ 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 ...”.

141. 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.

⁷⁷ [1964] AC 1129

⁷⁸ P.C.A No. 71 of 2007

142. In addition to the three criteria set out by Lord Devlin the learned authors of **McGregor on Damages**⁷⁹ 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.

143. In **Darrell Wade** the Court of Appeal provided the following guidance in awarding exemplary damages at paragraphs 19 to 21 where it was stated that:

19. Unlike compensatory damages:

“The object of exemplary damages ... is to punish and includes notions of condemnation of denunciation and deterrence (see *Rookes v Barnard* [1964] 1 All ER 367 at 407, [1964] AC 1129 at 1221). Exemplary damages are awarded where it is necessary to show that the law cannot be broken with impunity, to teach a wrongdoer that tort does not pay and to vindicate the strength of the law (see *Rookes v Bernard* [1964] 1 All ER 367 at 411, [1964] AC 1129 at 1227). An award of exemplary damages is therefore directed at the conduct of the wrongdoer. It is conduct that has been described in a variety of ways such as harsh, vindictive, reprehensible, malicious, wanton, wilful, arrogant, cynical, oppressive, as being in contempt of the plaintiff’s rights, contumelious, as offending the ordinary standards of morality or decent conduct in the community and outrageous.” **per Mendonca JA in Torres v PLIPDECO.**

⁷⁹ 19th Edition at paragraphs 13-033 to 13-044

20. Although essentially a case on the applicability of exemplary damages in breach of contract cases, the decision in *Torres* sought to provide general guidance on the manner in which a court should exercise its discretion in making an award for exemplary damages.
21. *Torres* determined that an award of exemplary damages has to be proportional to the defendant's conduct. Proportionality had to be examined in several dimensions, namely: (i) the blameworthiness of the defendant's conduct, (ii) the degree of the vulnerability of the plaintiff, (iii) the harm or potential harm directed specifically at the plaintiff, (iv) the need for deterrence, (v) after taking into account penalties both civil and criminal which had been or were likely to be inflicted on the defendant for the same conduct, and (vi) to the advantage wrongfully gained by the defendant from the misconduct."
144. It was submitted on behalf of the Defendant that an award for exemplary damages in the sum of \$50,000.00 to \$60,000.00 ought to be made since in his statement of Case the Claimant claimed, that he ought to be awarded exemplary damages on the basis that he was denied his constitutional right to be (a) informed promptly and with sufficient particularity of reasons for his arrest and/or detention; (b) the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with such person and; (c) his right to communicate with a friend or relative and he was beaten, burned and humiliated at the Princes Town Police Station.
145. I am of the opinion that an award for exemplary damages is appropriate for the following reasons. First, the burns which the Claimant suffered on his back were caused by the police officers who were with the Claimant in the CID office while he was being interrogated. It was clear that the officers

as servants and or agents of the State were blameworthy. Second, the Claimant was in a vulnerable position when he suffered the burns since he was under arrest and he was in the CID office being interrogated by 6 officers.

146. In determining the sum to award as exemplary damages the Court of Appeal in **Darrell Wade** stated at paragraph 18 that:

“18. ... the method of arriving at an award of exemplary damages ought not to be much different than the method used to arrive at an award for compensatory damages. The figure arrived at should be one which in the mind of the assessor satisfies the criteria for exemplary damages, aligns with awards in comparable cases and meets the justice of the case.”

147. In **Darrell Wade**, the Court of Appeal examined the awards for exemplary damages made by the High Court during the period January 2012 to December 2018 in 69 cases involving physical injury at the hands of the agents of the State where the State was found liable for assault and battery, false imprisonment and malicious prosecution. The Court of Appeal found that from the 69 cases the awards for exemplary damages ranged from \$5,000.00 to \$100,000.00.

148. Applying the guidance as set out in **Darrell Wade** the first step is to determine the range of awards applicable to the instant case from comparable cases.

149. In my opinion the following cases are relevant in determining the range for the award of exemplary damages in the instant case:

- (i) **Hakim Braithwaite v The Attorney General of Trinidad and Tobago**⁸⁰. On 25 June 2012, Boodoosingh J awarded the Claimant \$40,000.00 in exemplary damages. There was a high degree of viciousness and malice towards the Claimant and prison officers failed to ensure that the Claimant received proper medical attention after the assault.
- (ii) **Chet Sutton v The Attorney General of Trinidad and Tobago**⁸¹. On 30 September 2015, Master Alexander awarded the Claimant \$30,000.00 in exemplary damages. The Claimant suffered a burst lip, scrapes, cuts, bruises, and other soft tissue injuries about his body as well as injury to his jaw.
- (iii) **Shaban Muhammad v The Attorney General of Trinidad and Tobago**⁸². On 14 April 2016, Mohammed (R) J awarded the Claimant \$35,000.00 in exemplary damages. The Claimant suffered assault and battery leading to injuries and was offered no help after the beating.
- (iv) **Corneal Thomas v PC Llewellyn Bethelmy #16347 & The Attorney General of Trinidad and Tobago**⁸³. On 6 October 2016, Charles J awarded the Claimant \$20,000.00 in exemplary damages. The Claimant was arrested without reasonable and probable cause and he was charged and prosecuted. Additionally, the police assaulted him.

⁸⁰ CV2009- 03845

⁸¹ CV2011-00119

⁸² CV2010-04804

⁸³ CV2012- 05160

(v) **Leon King v The Attorney General of Trinidad and Tobago**⁸⁴. On 4 December 2018, Master Robertson awarded the Claimant \$35,000.00 in exemplary damages. The Claimant was assaulted by two soldiers, warded for 7 days and underwent surgery for a fractured jaw.

150. In my opinion, a reasonable range for an award of exemplary damages given the Court's findings in the instant case is between \$20,000.00 and \$40,000.00. I therefore award exemplary damages in the sum of \$30,000.00 to the Claimant.

INTEREST

151. The award of interest on damages is discretionary pursuant to section 25 of the **Supreme Court of Judicature Act**⁸⁵. The Court of Appeal in **The Attorney General of Trinidad and Tobago v. Fitzroy Brown et al**⁸⁶ 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.

152. 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. 5 July 2017 to the date of judgment.

ORDER

⁸⁴ CV2016-01009

⁸⁵ Chapter 4:01

⁸⁶ CA 251 of 2012

153. Judgment for the Claimant.
154. The Defendant to pay the Claimant general damages in the sum of \$190,000.00 for malicious prosecution 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. 5 July 2017 until judgment.
155. The Defendant to pay the Claimant general damages in the sum of \$150,000.00 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. 5 July 2017 until judgment.
156. The Defendant to pay the Claimant exemplary damages in the sum of \$30,000.00.
157. The Defendant to pay the Claimant prescribed costs in the sum of \$58,500.00.

.....
Margaret Y Mohammed
Judge