

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2021-01453**

**BETWEEN**

**DARLINGTON FRANCOIS**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

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

**Date of Delivery 29 April 2022**

**APPEARANCES**

**Mr Edwin K Roopnarine Attorney at law for the Claimant**

**Ms Mary Davis instructed by Mr Nairob Smart Attorneys at law for the  
Defendant**

**REASONS**

1. The Defendant applied on 17 August 2021 (“the Defendant’s Application”) to strike out the Claimant’s action pursuant to Rules 26.1(1)(k), 26.2(1)(c), 26.2.(1)(b) and 19.2(4) of the Civil Proceedings Rules 1998 as amended. In support of the Defendant’s Application was an affidavit of Instructing Attorney at law on record for the Defendant Mr Nairob Smart (“the Smart Affidavit”). The contents of the Smart Affidavit mirrored the grounds set out in the Defendant’s Application.

2. The Claimant's claim against the Defendant was for damages for wrongful arrest, assault/battery, false imprisonment and malicious prosecution. He also claimed exemplary and/or punitive and/or aggravated damages.
3. According to the Claimant, on 18 August, 2020 he and his family, were engaged in a peaceful protest in the Subway car park in Bamboo Village, La Romain against the unlawful and/or illegal removal from their land. The Claimant asserted that he and his family began occupying the land by the car park from around 1978-1980 until present. The Claimant and his family's house is located next to the car park, thereby making the carpark an access point to their home. The family also engaged in planting short term crops on their land.
4. Around 1:00 p.m., an Estate Inspector, Mr. Andy Ramoutar Regimental Number 31749 ("Mr. Ramoutar"), arrested the Claimant at the said carpark. The Claimant was taken to the San Fernando Police Station ("the Police Station") where he was charged with obscene language and resisting arrest by an officer in the execution of his duties. He was detained at the Police Station from 1:00 p.m. until 6:00 p.m.
5. At the Police Station, a police officer told the Claimant to sit in a chair behind the waiting room. The Claimant indicated that he was seriously injured on his job which caused him permanent injuries and thus he was aided with a stick.
6. According to the Claimant, during his time at the Police Station, he was never asked or requested to give a statement nor was he given a reason regarding his arrest. Just before 6:00 p.m. that same day, a Patrol Officer told the Claimant he could receive bail and be released once he arranged for the presence of a Justice of the Peace. The Claimant's mother, who was outside the Police Station, made arrangements with Justice of the Peace, Mr Dubay to visit the Police Station.

7. Mr Dubay arrived at the Police Station, explained the charges to the Claimant and handed him two (2) Notice to Prisoner Forms, which is exhibited as “**D.F.1**” and “**D.F.2**” in the Claimant’s Affidavit. Mr Dubay also informed the Claimant that he would need to appear at the Magistrates’ Court. The Claimant was released from the Station at 6:00 p.m.
8. The Claimant appeared at the San Fernando Magistrates’ Court on three occasions via remote hearing namely on 9 October, 2020, 27 January, 2021 and 28 January, 2021. On all occasions the Claimant appeared with his Attorney-at-Law, Mr. Edwin K. Roopnarine. At his last appearance on 28 January, 2021, the matter was dismissed against the Claimant. In the Claimant’s Affidavit, an Extract of the Magistrate’s Case Book was exhibited as “**D.F.3**”.
9. The Defendant contended that it was wrong for the Claimant to bring the action against the Defendant as Mr Ramoutar was not an employee, servant and/or agent of the State since he was not employed with a corporate body nor was he a member of the Trinidad and Tobago Police Service or Special Reserve. The Defendant relied on sections 4 and 19 of the **State Liability and Proceedings Act Chapter 8:02** to support its position.
10. The Claimant filed an affidavit in opposition on 9 March 2022 (“the Claimant’s Affidavit”). He contended that he was maliciously prosecuted as the Police detained him at the Police Station, directed charges against him, conducted no investigation in the matter and took no statement from him but they prosecuted him at the Magistrates’ Court.
11. On the 13 April 2022 I dismissed the Defendant’s Application and ordered the Defendant to pay the Claimant’s costs of the said Application which I scheduled to assess on 31 October 2022 @10 am virtual hearing. I also granted the Claimant permission to enter judgment in default of defence

against the Defendant with the costs of the action and the damages to be assessed by a Master at a date and time to be fixed by the Court Office.

12. In dismissing the Defendant's Application, I was of the opinion that the Defendant had a case to answer for the following reasons. I was satisfied that although Mr Ramoutar was an estate inspector who was not in the employ by the State and who initially detained the Claimant and took him to the Police Station, the Claimant's detention at the police station on 18 August, 2020 between 1:00 p.m. to 6:00 p.m. was based on the instructions from an officer at the said station. The Claimant was not detained by Mr Ramoutar during that period. Further the Claimant was charged and released after he obtained bail from a Justice of the Peace and he was prosecuted by a police prosecutor during the period 9 October 2020 to 28 January, 2021.

13. I granted the Claimant permission to enter judgment in default of defence as I was satisfied that the claim was served on the 11 May 2021 and the Defendant did not seek as an alternative relief in the Defendant's Application any extension of time to file a Defence. Further at paragraph 19 of the Claimant's Affidavit, one of the orders he sought was for judgment to be entered for him. Having dismissed the Defendant's Application, there was no bar to granting the Claimant permission to enter judgment in default of defence against the Defendant and for the costs and damages to be assessed by a Master at a time to be fixed by the Court Office.

**/s/ Margaret Y. Mohammed**  
**Judge**