

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**C.V. No. 2010-04804**

**BETWEEN**

**SHABAN MUHAMMAD**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Appearances:**

Ms. Yaseen Ahmed and Ms. Tara Lutchman for the Claimant

Ms. Coreen Findley instructed by Javier Forrester for the Defendant

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**JUDGMENT**

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**A. Introduction**

[1] On 19 November 2010, the claimant filed his claim form and statement of case against the defendant claiming relief from the court in the form of general damages inclusive of aggravated and/or exemplary damages for assault and battery arising out of an incident which occurred on 16 November 2007 at the B and S Sports Club situate at

Mercer Street, Diego Martin. The claimant further claimed his costs and interest at the statutory rate of 6% per annum on whatever damages may be awarded from 16 November 2007 to the date of judgment and thereafter at 12% per annum.

[2] The defendant filed its appearance to the claim on 9 December 2010, therein disclosing its intention to defend the claim. Accordingly, the defence was filed on 14 February 2011.

[3] The matter was initially assigned to the Honourable Madam Justice Pemberton, before whom the first hearing took place on 22 March 2011. At that hearing Pemberton J ordered that the claimant be referred for psychiatric evaluation to determine whether he had the capacity to prosecute the instant action; the court to bear the expenses of such exercise. Thus, it followed that the claimant was evaluated by Dr. Hazel Othello, Consultant Psychiatrist, Forensic Unit, St. Ann's Hospital, St. Ann's on 24 May 2011. In Dr. Othello's Report dated 25 July 2011, she opined that the claimant possessed the mental capacity to prosecute the instant action and that the case could be tried on its own merit. As a result the matter proceeded before Pemberton J.

[4] Consequent to permission granted by the court the claimant filed an amended statement of case on 15 July 2013.

[5] The claimant filed his witness statement together with the witness statement of the supporting witness, Adrian Wilson, on 28 June 2013. The witness statement of Police Constable Michael Melville was filed by the defendant on 28 June 2013. The court permitted an extension of time for the defendant to file and serve witness statements of additional witnesses. As such, on the 12 July 2013 the defendant filed the witness statement of Police Constable Randall Chee You; and then on 17 July 2013 filed the witness statements of Private Kwesi Montrose and Corporal Darin Modeste.

[6] Thereafter the matter was transferred to this court, where it continued from the stage of the pre-trial review which was held on 4 November 2014. Both the claimant and defendant filed their respective statements of issue on 28 November 2014.

[7] The trial took place on 14 April 2015 following which the claimant filed written closing submissions on 29 April 2015 and the defendant filed same on 12 May 2015. Written closing submissions in reply were also filed by the claimant on 28 May 2015.

[8] I have considered all of the evidence before the court as well as the submissions made by counsel for the claimant and the defendant. Having reviewed and applied the law in respect of assault and battery, I am of the view that the claimant has proved that, on a balance of probabilities, on 16 November 2007 he was unjustly and unlawfully assaulted and battered by a team of police officers and soldiers at the B and S Sports Club. The unreasonable, unlawful and unjust conduct of the police officers and soldiers were such that it no doubt caused public humiliation to the claimant therefore warranting an award of aggravated damages. Additionally, the oppressive and arbitrary nature of the assault and battery committed against the claimant by agents of the State who are entrusted with the responsibility of protecting and serving the public and enforcing law and order, make this an appropriate case for the award of exemplary damages. A claim for special damages has also been made for money which the claimant stated was taken from him during the assault and battery, such damages which the court shall also consider when submissions are made by both counsel as to the quantum of damages which should be awarded to the claimant.

[9] This is indeed an unfortunate case and this court intends to send a clear message that such conduct ought not and will not be condoned particularly among those entrusted with protecting and serving citizens and who by nature of their responsibility to enforce the law are expected to show uppermost respect for the law and act within the boundaries of integrity and justice in the conduct of their duties.

[10] I have already determined that this is an appropriate case for the award of general damages inclusive of aggravated damages, special damages as claimed and exemplary damages. In light of my findings, I shall invite the parties to make submissions on the quantum of damages which should be justly granted to the claimant.

[11] I have hereinafter detailed the reasons for the court's decision on liability in the instant matter.

**B. Factual Background**

[12] At the time of the events relevant to this claim, the claimant was employed as a cashier at the B and S Sports Club (hereinafter referred to as the "Sports Club") situate at Mercer Street, Diego Martin.

[13] The defendant is the Attorney General of Trinidad and Tobago sued pursuant to the provisions of the **State Liability and Proceedings Act Chap. 8:02** in its capacity as legal representative of the State: the State as employer of police officers in the Trinidad and Tobago Police Service and soldiers of the Trinidad and Tobago Regiment.

[14] The conduct of the police officers during a search carried out in the very early morning hours of 16 November 2007 are the subject matter of the instant claim.

**(i) Facts pleaded by the claimant**

[15] The claimant contended that on the night of 15 November 2007 he was working at the Sports Club as a cashier. He stated that at about 1:15 am on 16 November 2007 he was in the process of leaving the Sports Club having finished work. He stated that on his way down the stairs from the club, he recognised that the club was being surrounded by five (5) police vehicles including police vehicle registration numbers TCE 9225 and TCD 8547.

[16] In summary, the claimant stated that some of the officers ran up the stairs into the club and others remained outside the club. According to the claimant, he was searched by an officer while standing on the stairway. After being searched the officer told the claimant that he could proceed down the staircase and leave. The claimant stated that he proceeded down the staircase and when he reached the bottom thereof he was approached by another officer who asked him where he was going and directed him to stand in a line against the wall with about seven or eight other patrons.

[17] The claimant described in detail a series of acts of assault and battery that were then committed by two soldiers and one officer against other patrons and then finally against him while he was in the line against the wall. He made specific mention of Officer Shaka Trim and Officer Khan whom he alleged were involved in the assault and battery against the patrons. He described acts of repeated beating done to him by the soldiers and officers using their guns against his head, back and jaw.

[18] The claimant further stated that while being beaten, soldiers ripped off his shirt pocket and took \$2,600.00 in cash from him. The claimant was then dragged to the floor and beaten repeatedly on his head by the soldiers. He maintained that he was then sent to a corner where the soldiers continued to beat him on his body with their guns.

[19] According to the claimant, at about 2:45 on the same morning, the police officers and soldiers left the club. The claimant contended that the police officers and soldiers acting as the servants and/or agents of the defendant, most of whose names he did not know, acted unlawfully and had no reasonable basis for committing the acts of assault and battery on him and other persons. He averred that the officers were reckless in the discharge of their duties.

[20] The claimant further contended that this was an appropriate case for an award of both aggravated and exemplary damages, in particular because the behaviour and action of the police officers and soldiers in this incident were highhanded, arbitrary and oppressive. Additionally, the beatings were conducted arbitrarily and in a manner so as to humiliate and degrade the claimant in circumstances that were unjustified.

[21] Moreover, the claimant emphasised that as a result of the incident and beatings he suffered pain, injuries, loss, damage, physical discomfort, severe aggravation, humiliation and mental distress. He complained of the following injuries:

- (i) swelling on head and back, left arm, left hand;
- (ii) pain in the neck and lower back;
- (iii) headaches and dizziness;
- (iv) soft tissue injury to left shoulder;

- (v) musculoskeletal back pain;
- (vi) post traumatic stress syndrome;
- (vii) flexion deformity of third digit on left hand;
- (viii) chronic/recurrent epistaxis (epistaxis bilaterally); and
- (ix) mild hearing loss.

A medical report dated 25 March 2013 from Dr. S. Dookhoo, House Officer, ENT Clinic, General Hospital, Port-of-Spain was attached to the claimant's statement of case to support his claim in respect of the aforementioned suffering and injuries.

[22] The claimant also claimed special damages in the following sums:

- (i) **\$2,600.00** as loss of cash; and
- (ii) **\$200.00** for transport to and from St. Clair Medical Hospital, Mt. Hope Hospital, Port of Spain General Hospital, St. Ann's Hospital and Petit Valley Clinic for five (5) days.

[23] Moreover, the claimant stated that he continued to suffer from his injuries and in 2008 developed dreams, dizziness and headaches. He stated that he was referred to St. Ann's Hospital for psychiatric evaluation for Post Traumatic Stress Syndrome and continues to follow up in the outpatients' Psychiatric Clinic at Petit Valley for which he continues to incur transportation costs.

[24] At the trial, in addition to the witness testimony of himself and Mr. Adrian Wilson, the claimant relied heavily on the following documents in support of his claim:

- (i) Medical report dated 31 December 2007;
- (ii) Medical report dated 13 February 2008;
- (iii) Medical report dated 7 March 2008;
- (iv) Medical report dated 25 March 2013;
- (v) Referral Form dated 1 August 2008; and
- (vi) Pre-action Protocol letter dated 1 February 2008.

**(ii) The facts as stated by the defendant**

[25] In its defence, the defendant admitted that around 1:15am on 16 November 2007 a party comprising police officers and soldiers visited the Sports Club in five (5) police vehicles including TCD 8547. The defendant also stated that in addition to TCD 8547, the party of police officers and soldiers were driving police vehicles TCD 7349, PBZ 1484 and TCC 9255.

[26] The defendant admitted that the police officers began searching patrons at the club. Two of the police officers were Officer Shaka Trim and Officer Khan (the latter now deceased). From the outset the defendant denied that the police officers and soldiers beat or assaulted persons who were leaving the Sports Club. In particular, it was denied that the claimant was either assaulted or beaten by any of the police officers or soldiers present and further denied that the claimant's shirt pocket was ripped by the soldiers and any money taken from him.

[27] The defendant's version of the facts was that on 16 November 2007 at about 1:15am Acting Sergeant Powder Regimental No. 14306 of the West End Police Station, Diego Martin dispatched a number of police officers under his command to conduct exercises within the district in conjunction with members of the Trinidad and Tobago Defence Force.

[28] The party of police officers and soldiers included:

- (i) Sergeant Adams Regimental No. 10301 armed with beretta 5656;
- (ii) Police Constable Ali Regimental No. 13942 armed with galil 6704 and pistol 6288;
- (iii) PTE Montrose Regimental No. 11484;
- (iv) PTE Ramdass Regimental No. 10306;
- (v) Acting Corporal Khan (now deceased) Regimental No. 14850 armed with beretta 5659;
- (vi) Police Constable Chee You Regimental No. 16975 armed with beretta 5654;
- (vii) Police Constable Melville Regimental No. 17060 armed with pistol 6284;

- (viii) Lance Corporal Salvary Regimental No. 9408;
- (ix) Lance Corporal Modeste Regimental No. 9500; and
- (x) Police Constable Trim Regimental No. 16720.

[29] The defendant was adamant that the Sports Club was only one of the places that the police officers and soldiers visited on the date in question and the sole purpose of the visit was to conduct a search. The Sports Club was described as a two storey building with another bar on the ground floor.

[30] According to the defendant, upon arriving at the Sports Club several police officers secured the banister, staircase and outside area of the Sports Club. The soldiers remained downstairs providing cover and support for the police officers. The police officers conducted a search of the entire premises as well as the persons that were located at the premises. The search lasted approximately 30 minutes. When the search was over the police officers and soldiers left the premises as nothing illegal was found. The defendant was adamant that neither the claimant nor any other person present at the Sports Club was beaten or assaulted in any way by the police officers or soldiers involved in the search exercise.

[31] The defendant noted that in addition to the search conducted at the Sports Club, the party of police officers and soldiers executed several search warrants and conducted searches in the Diego Martin area. The evidence was that five search warrants were executed on 16 November 2007 the first of such warrants being executed at 1:45am at Ramjohn Trace, Eligon Avenue, Diego Martin. In support of that fact defendant exhibited a copy of a Station Diary Extract for Friday 16 November, 2007.

[32] Although the defendant did not dispute the medical reports attached to the claimant's claim, the defendant disputed and denied that the suffering and injuries stated in the statement of case were caused by any agent and/or servant of the State. All special damages claimed by the claimant against the defendant were also denied by the defendant. In the premises, the defendant denied that the claimant was or is entitled to any of the reliefs sought in his claim.



**C. Issues before the court for determination**

[33] This judgment focuses solely on the question of liability in respect of the instant claim. Thus the sole issue for this court's determination is whether the claimant was indeed assaulted and battered by the police officers and/or soldiers on 16 November 2007.

[34] If this court concludes that the claimant was indeed assaulted and battered by the defendant's agents as claimed, then two other issues arise for consideration, namely:

**I. The issue of the nature of the damages; and**

**II. The issue of the quantum of the damages,**

to which the claimant is entitled to claim. Whilst the nature of the damages suffered can be determined from the evidence in this judgment, the quantum will have to be determined after further submissions are made. In the event that the court concludes that the claimant is entitled to damages then the court shall give further directions to the parties for submissions to be made on quantum before making its determination in that regard.

**D. The Law and its application to the issues**

**(i) The law**

[35] The law in respect of assault and battery is often simple and straightforward, more so requiring an analysis of the evidence so as to determine whether acts of assault and or battery were indeed committed and if committed whether any defence has been proved so as to justify same. The law may be summarised briefly as hereunder stated.

[36] In essence, an assault is a direct threat made by a defendant to a claimant which causes the claimant to apprehend immediate and unlawful violence. To be deemed an assault the act of the defendant must be such that it would have caused any reasonable man to fear that violence was about to be applied to him. An objective test is therefore

applied. The existence of actual physical contact by the defendant against the claimant is not necessary for an act to constitute an assault, but the claimant must have reasonably apprehended or feared that such violent contact would be made.

[37] On the other hand, battery is committed when a defendant intentionally or recklessly inflicts unlawful force upon a claimant. Unlike assault, battery requires that the defendant makes direct physical contact with the claimant. Damage need not be caused for an act to constitute battery though the infliction of actual damage may take a claim outside the limits of nominal damages.

[38] Notably, it is evident from a review of the academic writings and cases concerned with this area of law that it is well established in instances where an assault and/or battery is deemed to have been committed, it is a complete defence if: (i) the defendant is found to have reasonably committed the act of assault and/or battery in defence of himself, another or his property; (ii) where statute expressly allows it in the protection of order; and (iii) where as in sports such as boxing and wrestling it is clear that both parties have consented to it. Particularly with respect to the defence of self-defence it must be shown that the threat or force used was reasonable and proportionate to the attack to which the defendant responded.

[39] If a court finds that an assault or battery has been unlawfully and unreasonably committed against a claimant, the claimant will be entitled to damages as claimed. The law in respect of damages in a case of assault and/or battery is usefully explained in **Halsbury's Laws of England** (Volume 29, 2014) under the rubric "*Trespass to the Person*" at para 497 which states:

*"Trespass to the person, whether by assault, battery or false imprisonment, is actionable without proof of actual damage. Thus in all cases of trespass nominal damages at least are recoverable, and substantial damages are recoverable for discomfort and inconvenience, or injury to dignity, even where no physical injury is proved. Where physical injury does result from the trespass, the damages will be calculated as in any other action for personal injury."*

*Damages for emotional or psychiatric damage which does not result in physical illness may be recovered where there is other physical injury, and may also be recovered in cases where there is no physical injury, as in the case of an assault without any battery, provided it is substantial and not too remote. An award of aggravated damages may be made in an action for trespass to the person, unlike an action in negligence. The compensatory principle applies to the award of damages to a claimant in respect of injured feelings.*

*Exemplary damages may be awarded in an action for trespass to the person where the trespass falls within one of the three categories in which such damages are generally available. There may be such an award in an action against the police or other emanations of the state, where the conduct of police officers or other agents has been oppressive or arbitrary. In exceptional cases exemplary damages may be awarded in relation to criminal acts, with the purpose of preventing the unjust enrichment of the perpetrator.....*

*In addition to general damages for any physical or mental injury which results directly from the trespass, damages for specific pecuniary loss or other consequential damage may be recovered. Provocation does not serve to reduce the damages recoverable by way of compensation for physical injury, though it may negative the award of exemplary damages.”  
[Emphasis added]*

[40] Our local courts have indeed, in addition to the award of general damages, awarded aggravated damages for assault and battery in situations where the claimant by consequence suffered indignity, disgrace, humiliation or mental suffering: **Sudan v Carter H.C. 1735/1990**. Further, with the hope of punishing and deterring abusive acts of assault and battery our local court has shown strong condemnation of same specifically where it is committed by police officers and government officials by awarding exemplary damages to a claimant in accordance with the rule stated in **Rookes v Barnard (1964) AC 1129** that exemplary damages may be awarded where the conduct in question is held to be oppressive, arbitrary or unconstitutional action by a servant of government: see for instance **Quashie v Airport Authority of Trinidad and Tobago H.C. 176/1988**; **Quashie v Airport Authority of Trinidad and Tobago H.C. 176 of 1988, CA Civ. 159/1992**.

**(ii) Application of the law to the issue**

[41] The determination of this matter turns wholly on which version of facts should be accepted as the truth, be it that of the claimant or the defendant. There is agreement between the parties only to the extent that the Sports Club was indeed searched on the 16 November 2007 at around 1:15a.m. However, the disparity in the version of events proffered by the claimant and witnesses for the defendant occurs specifically in relation to the events of the assault and battery.

[42] All the witnesses for the defendant denied that any of the events of assault and/or battery alleged by the claimant ever took place. They stated that once the thirty-minute search of the Sports Club was completed the police officers and soldiers left the compound of the Sports Club and proceeded to another venue which was scheduled to be searched that same morning. According to the defence, that other venue, Ramjohn Trace, Eligon Avenue, Diego Martin was searched at 1:45a.m., therefore making it impossible for the events of assault and battery, as alleged by the claimant, to have taken place.

[43] The test as in all civil cases is ultimately whether the claimant has proven his case on a balance of probabilities. Where there is disparity between the versions of events on both sides the court is left to make a determination on the facts. To this end, the claimant's counsel submitted and this court accepts that, as stated by Lord Bingham in the Text "**The Business of Judging**" **Selected Essays and Speeches (2005)** at page 6:

***The main tests** needed to determine whether a witness is lying or not are, I think, the following, although their relative importance will vary widely from case to case:*

- (1) **The consistency of the witness' evidence with what is agreed, or clearly shown by other evidence, to have occurred;***
- (2) **The internal consistency of the witness' evidence;***
- (3) **Consistency with what the witness has said or deposed on other occasions;***
- (4) **The credit of the witness in relation to matters not germane to the litigation;***
- (5) **The demeanor of the witness.**" [Emphasis added]*

[44] Bearing in mind the relevant principles of law, I am convinced by the evidence put before this court that the claimant's version of events in relation to the instant matter is more likely to be true on a balance of probabilities. The evidence of the claimant was consistent throughout and under cross-examination both the claimant and his supporting witness, Mr. Adrian Wilson, seemed clear on the facts, eager to give evidence and consistent. Their responses were confident and certain and indeed much more convincing than that of the defendant's witnesses. On the other hand, the defendant's witnesses' evidence was fraught with uncertainties, lacked conviction and gave rise to much suspicion that a wrong was indeed committed against the claimant.

[45] In those premises this court accepts that on the early morning of 16 November 2007, the claimant was indeed leaving work at the Sports Club at around 1:15 and thus was proceeding down the staircase of the Sports Club when he recognised that the club was being surrounded by police vehicles. It is believed that both soldiers and police officers emerged from the police vehicles, some of the officers proceeding up the staircase into the Sports Club and some of the officers remaining to the outside of the Sports Club in the front yard.

[46] This court further accepts the claimant's evidence that while he was standing on the flat area of the staircase after the first flight of stairs, an officer approached him and searched him, after which he was told by that officer to proceed to the bottom of the staircase and leave. It is believed that the claimant did so proceed but upon reaching the bottom of the staircase was approached by another police officer who asked him where he was going and when the claimant responded that he had already been searched and instructed to leave, that other police officer immediately directed the claimant to stand in a line up against the wall that was located at the front yard of the Sports club not far from the bottom of the staircase.

[47] This court accepts the evidence of the claimant, that while he stood in the line-up of seven or eight patrons against the wall, the officers then assaulted and/or battered the patrons one by one until they reached to the claimant who stood last in the line-up. The court finds that the claimant proffered credible and reliable evidence in his case, that

when he was approached in the line-up by two soldiers and one officer, having witnessed the beating of the patrons before himself and fearing for his safety, as soon as the soldiers and police officer reached him, he told them that he worked at the Sports Club, that it was his family's club and that he was only able to further utter his name when one of the officers (whom he identified as Police Officer Khan) immediately struck him to his back using the officer's gun butt. It followed that as soon as he got that lash the two other soldiers started to beat the claimant down with their guns; beating him to his head and back and blows to his jaw.

[48] It is accepted that the claimant was beaten to the ground and stamped upon, that he was indeed held by his shirt and dragged along the ground, and further that his shirt pocket was further ripped by one of the officers and the monetary contents of his shirt pocket stolen which on a balance of probabilities was likely to include the \$2000.00 that the claimant collected from his father on his way to work in order to facilitate the payment of a bill for his father. It is believed that after the assault and battery to the claimant, an officer then shouted for everyone to leave, thereby bringing a close to the very unfortunate unlawful assault and battery committed against the claimant.

[49] This court indeed found it curious that the events in respect of the search of the Sports Club were against proper police procedure never reported in the station diary, although it was admitted by the defendant that the search of the Sports Club did take place and although proper reports were made in the station diary in respect of other premises which had been searched by the same group of officers on that morning of 16 November 2007.

[50] Further, the evidence of both of the witnesses, Police Constable Melville and Police Constable Chee You, who testified at the trial, was terribly lacking and unreliable given that neither appeared able to give a proper account of the events that took place during the search of the Sports Club but limited their evidence to an admittance that a search was carried out and a mere denial of assault and battery against the claimant. Neither of the witnesses seemed to be confident about the events which took place during the search.

[51] In fact, even the oral evidence of both of the defendant's witnesses appeared for the most part "shaky" in terms of whether the witnesses were actually denying the possibility that an unlawful assault and/or battery had been committed against the claimant, as both witnesses expressly accepted the possibility that events could have happened as alleged by the claimant even though they may have been physically located in a position to witness it during the search.

[52] This came out clearly in the cross-examination of Police Constable Melville who firstly admitted that he may have been positioned inside of the Sports Club when the alleged events took place thereby making it unlikely that he would have seen or heard the assault and battery that the claimant alleged, if it indeed took place. Police Constable Melville stated at page 58 to 59 of the Notes of Evidence:

*"MR. AHMED: Right there is a doorway entrance, so you would agree that when you are inside the upstairs premises you cannot you cannot see what is taking place downstairs at the steps, correct?"*

*MR. MELVILLE: Correct yes sir.*

*MR. AHMED: When I say downstairs I mean at the bottom of the steps?*

*MR. MELVILLE: Yes I wouldn't be able to see outside.*

*MR. AHMED: Right you wouldn't be right so that's an even wider answer; you would not be able to see outside?*

*MR. MELVILLE: Yes sir.*

*MR. AHMED: So it would be correct to say for that fifteen (15) to twenty (20) minutes, whilst you were inside, upstairs, you would not have seen or heard anything that was taking place outside, outside of the of the premises correct?*

*MR. MELVILLE: I would not be able to see anything, but if something, I might have heard something depending on how loud it is.*

*MR. AHMED: Constable Constable Melville based on what you said in your previous answer I am simply asking for that fifteen (15) to twenty (20) minutes you were involved in the exercise upstairs, the search exercise upstairs, you would not have heard or seen anything that was taking place outside for that fifteen (15) to twenty (20) minutes that you were there, isn't that so?*

MR. MELVILLE: *Yes sir I wouldn't be able to see anything but I might a be able to hear something.*

MR. AHMED: *You might have been able to hear something?*

MR. MELVILLE: *Yes sir.*

MR. AHMED: *Taking place downstairs at the bottom of the stairs?*

MR. MELVILLE: *Depends on how loud it is.*

MR. AHMED: *Okay. Depends on how loud it is. **So Constable Melville when somebody gets hit with a gun butt on they head, would that make noise?***

MR. MELVILLE: **No sir.**

MR. AHMED: *No. **If somebody is getting kicked and hit about their body and face and shoulder that wouldn't make noise, correct?***

MR. MELVILLE: **It wouldn't make no set a noise.**

MR. AHMED: *Right. If somebody is being dragged on the ground you wouldn't hear that either?*

MR. MELVILLE: **You wouldn't hear that either."**

[53] When counsel for the claimant then proceeded to put the claimant's case to Constable Melville under cross-examination, Constable Melville's response to the majority of questions put was ***"I have no knowledge of that, Sir"***, which he admitted under cross-examination to mean that he believed that the allegations of the claimant to be untrue simply because he was of the opinion that if they were true then one of the other officers would have told him about what had transpired. At pages 66 to 67 of the Notes of Evidence he stated:

*"MR. AHMED: I am putting to you that he was hit by that officer and sent to line up against the wall?*

MR. MELVILLE: ***I have no knowledge of that sir.***

MR. AHMED: *He was hit on his head with a with the gun butt and sent to line up. I am putting to you that he was made to line up against this wall with together with six (6), five (5) or six (6) other patrons?*

MR. MELVILLE: ***No sir I have no knowledge of that.***

MR. AHMED: *You have no knowledge of that. Constable Melville I am putting to you that the police officer and the two (2) soldiers proceeded to beat each one of those persons in the line until they reached Mr. Muhammad at the end of that line.*

MR. MELVILLE: ***I have no knowledge of that sir.***



MR. AHMED: *So you cannot say whether it is true or it is not true, isn't that so, you cannot say if it is true or if it is not true, isn't that so, that you cannot say.*

MR. MELVILLE: *I could say it is not true because if it happened I would have heard about it from the other officers.*

MR. AHMED: *Constable Melville from your personal knowledge of the events taking place that night you cannot say if it is true or if it is untrue, isn't that so.*

MR. MELVILLE: *I can say if it is untrue because I didn't hear it from the other officers who was in the exercise."*

[54] Certainly, that is an unreliable basis upon which to assess the likelihood of truth as, particularly in instances in which a wrong has been done, it is more likely that the wrong would be kept in secret so as to avoid the consequences that may arise.

[55] The emptiness, uncertainty and unreliability of the evidence given by the defendant's witnesses were further emphasised in the evidence of Police Constable Chee You, who from the outset of cross-examination, when asked by counsel for the claimant what his recollection was, of the material events in this matter, on a scale of one to ten, responded "**three**", thereby clearly indicating his inability to assist the court with respect to the facts of this matter. Certainly, Constable Chee You's most popular response to the questions asked of him under cross-examination was "**I can't recall**". He went even further in his cross-examination, when asked by the court, to admit that by the words "**I can't recall**" he meant that the facts **could have happened** as alleged by the claimant but that he (Constable Chee You) simply could not remember. As stated at page 80 of the Notes of Evidence:

"MR. AHMED: *Constable Chee You I am putting to you also that when he was placed in that line against the wall all all persons on that line was beaten by one officer, one police officer and two soldiers with guns?*

MR. CHEE YOU: ***I can't recall.***

MR. AHMED: *I am putting to you also sir that when the officer and the soldiers reached Mr. Mr. Muhammad, Mr. Shaban Muhammad, he was beaten much more severely than the other persons in that line?*

MR. CHEE YOU: ***I can't recall.***

MR. AHMED: *And he was he was, he fell to the ground or he was beaten to the ground and his shirt was ripped and \$2,600. was taken from him?*

MR. CHEE YOU: *I can't recall.*

**COURT:** **Now you you're saying you can't recall, by saying that you can't recall, is it that it could have happened and you can't remember it?**

MR. CHEE YOU: **Yes, yes sir."**

[56] In the circumstances of the written and oral evidence before this court, this court found that there was very little credible or reliable evidence proffered by the defendant's witnesses against the claimant's claim, compared to the confident and convincing evidence of the claimant and his supporting witness. The court is firmly of the view that the events as alleged by the claimant are indeed more likely to be true on a balance of probabilities than that proffered by the defence.

#### **E. Disposition**

[57] Accordingly, the claimant has proved his case of assault and battery against the defendant on a balance of probabilities. The instant matter shall proceed before this court for determination on the issue of the quantum of damages. I am of the view that the unreasonable, unlawful and unjust conduct of the police officers and soldiers were such that it no doubt caused public humiliation to the claimant therefore warranting an award of aggravated damages. Additionally, the oppressive and arbitrary nature of the assault and battery committed against the claimant by agents of the State who are entrusted with the responsibility of protecting and serving the public and enforcing law and order, make this an appropriate case for the award of exemplary damages. A claim for special damages has also been made for money which the claimant stated was taken from him during the assault and battery, such damages which the court shall also consider when submissions are made by both counsel as to the quantum of damages which should be awarded to the claimant.

[58] In light of the court's findings, the order of the court is as follows:

**ORDER:**

1. There shall be judgment for the claimant against the defendant on the issue of liability for assault and battery.
2. The claimant is entitled to an award of damages, inclusive of special damages, aggravated damages and exemplary damages together with interests to be assessed on a date to be fixed by this court.
3. Costs of this claim are to be paid by the defendant to the claimant to be quantified on the prescribed scale after the quantum of damages has been determined.
4. Written submissions with authorities on the issue of the quantum of damages to be filed and served by the claimant's attorney-at-law on or before the 19<sup>th</sup> May, 2016.
5. Response submissions with authorities to be filed and served by the defendant's attorney-at-law on or before the 21<sup>st</sup> June, 2016.
6. Reply submissions, if necessary, on the authorities only to be filed and served on or before the 11<sup>th</sup> July, 2016.
7. Decision on the quantum of damages, interests and costs is tentatively fixed for the 28<sup>th</sup> July, 2016 at 11:30 am in Courtroom POS 03

Dated this 14<sup>th</sup> day of April, 2016

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**Robin N. Mohammed**  
**Judge**