

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Sub-Registry Tobago

Claim No. CV: 2011-02733

BETWEEN

Hollis Scott

Claimant

AND

The Attorney General of

Trinidad and Tobago

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. F. Scoon and Mr. J. Roper for the Claimant.

Ms. K. Prosper instructed by Mr. B. James for the Defendant.

Judgment

1. This is an action for damages for false imprisonment and breach of constitutional rights. For the reasons that follow the judgment of the court is as follows:

- i. The Claim is dismissed.
- ii. The Claimant is to pay the prescribed costs of the Defendant in the sum of \$14,000.00.

2. The Claimant claims that on the 21st July 2010 he attended the Moriah Police Station to make a report following a domestic dispute between himself and his then wife, Kathleen Dillon-Scott. The Claimant claims that he and Mrs. Dillon-Scott had a history of domestic disputes which resulted in a Protection Order being lodged at the Moriah Police Station against Mrs. Dillon-Scott. It is pursuant to this Protection Order and pursuant to what he perceived as a breach by his then wife that he attended the police station to make a report. He avers that after making the report and giving and signing a statement to one Police Constable Bishop, regimental number 15084, he was arrested without warning, reason and probable cause and placed in a cell from around 12 midnight on the 21st July 2010 until 1:00 p.m. on the 22nd July 2010.

3. The Claimant claims that while in the cell, he was made to sign a second statement on the guise of a mistake having been made on the previous statement. The Claimant alleges that he could not see due to poor lighting in the cell but signed the statement in any case. However, the Claimant claims that the statement was altered by deleting “*I saw on the caller ID ‘ASP Edwards Calling’ and I ...*” and replacing it with “*The phone began ringing and I ...*”.

4. It is the Claimant's case that during this period of imprisonment he was denied his requests to call a family member or friend and was never informed of his constitutional right to retain and/or instruct without delay a legal adviser of his choice.

5. It is on these bases that the Claimant claims damages for false imprisonment and breach of constitutional rights. The Claimant also claims aggravated and/or exemplary damages and has particularized the basis for this claim. In this regard, the Claimant alleges that at all material times PC Bishop acted under the instructions of one PC Edwards. According to the Claimant, PC Edwards had been carrying on an illicit relationship with Mrs. Dillon-Scott and maliciously and without reasonable and probable cause directed that the Claimant be arrested. Further, he alleges that although he made the report pursuant to the Protection Order the officers denied knowledge of the Protection Order.

6. The Defendant denies the Claimant's version of facts and instead claims that:
 - i. Mrs. Dillon-Scott arrived at the Moriah Police Station at 11:40 p.m. on 20th July 2010 with a swollen and bleeding nose and reported to Officer Joseph that her husband (the Claimant) had cuffed her in her face.
 - ii. The Claimant then arrived at the police station at 12:15 a.m. speaking loudly and aggressively. He indicated that he had had an altercation with his wife and that he hit her. Statements were taken from both parties.
 - iii. PC Edwards arrived at the station while the statements were being taken to perform usual checks on the station and left when his checks were complete.
 - iv. After the Claimant gave the statement PC Bishop inquired whether the Claimant had a relative he could spend the night by, but the Claimant indicated that he was going home. Bearing in mind the nature of the reports made by the Mrs. Dillon-Scott and the history of domestic

violence, PCs Joseph and Bishop urged the Claimant to remain at the station until he calmed down. The Claimant agreed to do so and remained on a chair in the charge room. At 6:15 a.m. on the 21st July 2010 the Claimant left the station.

7. The Defendant further claims that although checks were made at the Moriah Police Station for the Protection Order no such order was found.
8. Thus the Defendant is denying the essence of a claim in false imprisonment, that is to say, that the Claimant was ever arrested or detained.

False Imprisonment

9. The gist of a claim of false imprisonment is the mere imprisonment. The claimant need not prove that the imprisonment was unlawful or malicious, but must establish a prima facie case that he was imprisoned by the defendant; the onus then lies on the defendant of proving a justification: **Halsbury's Laws of England TORT, VOLUME 97 (2010) 5TH EDITION** para 542. Where the imprisonment is justified, the claim in false imprisonment fails: **Algoo v The AG CV No. 2008-03355**
10. Any total restraint of the liberty of the person, for however short a time, by the use or threat of force or by confinement, is an imprisonment. It is not necessary that the person detained is aware of the detention at the time. To compel a person to remain in a given place is an imprisonment, but merely to obstruct a person attempting to pass in a particular direction or to prevent him from moving in any direction but one is not.

11. The primary issue for determination thus is whether the Claimant had been imprisoned by the Defendant. It is the Claimant's burden to show a prima facie case of his imprisonment and the court will examine his evidence in this regard.

12. On an examination of the Claimant's case and his evidence in support, the court notes the following:

- i. In the Claimant's statement of case, there is no mention of the Mrs. Dillon-Scott attending the police station. Instead, the Claimant's case as pleaded was that he attended the police station to make a report of the dispute. However, in the Claimant's witness statement he testifies that when he attended the police station he observed his wife also entering the station.
- ii. The Claimant testified that when he was arrested he was placed in a cell by himself but that there was another prisoner in the adjacent cell. However, in the pre-action protocol letter, annexed to the Claimant's statement of case it is alleged that the Claimant was placed "*in a dingy cramped cell which he had to share with criminals and other arrested persons*". In cross examination, when questioned about this inconsistency, the Claimant affirmed that he was in the cell alone and testified that it may have been a three line typographical error of his attorney and although it is inconsistent with what he has said in evidence it was not written by him.
- iii. In Station Diary extract no. 23 from the Moriah Police Station dated the 21st July 2010, the Claimant is referred to as a civilian. This document forms part of the Agreed Bundle of Documents. In ***Soogrim v The AG CV2007-3755 HCA 990/05*** the Honourable Tewary-Reddy, as he then was, in finding that the Claimant had been imprisoned and rejecting that

the Claimant had been left to sit in the charge room as was contended by the Defendant, noted that the Station Diary extract “*described the Claimant as a “prisoner” and this Court notes that a “prisoner” is not normally left free in a charge room*”. To the contrary, in the instant matter, the Claimant was described as a civilian, which in the court’s view sways the balance of probability to the finding that the Claimant was not imprisoned.

- iv. The Claimant alleged and testified that his arrest was a direct result of an illicit relationship between ASP Edwards and Mrs. Dillon-Scott. The Claimant testified that upon becoming fully aware of this relationship after his arrest, since the telephone was registered to his name he examined his wife’s cell phone records. However, when questioned on this in cross examination the Claimant testified that although the records are important to prove this assertion he was unable to obtain the records from TSTT as he was told he needed a court order for same.
- v. In this regard it would suffice for the court to make two observations. Firstly, if as the Claimant says the telephone was registered in his name at TSTT, it would not have been necessary to obtain a court order for a record of calls made from the cell phone. Secondly, the Claimant was able to examine the phone records, but was unable to produce the document that he claims he examined. This the court finds to be passing strange and certainly does not assist the Claimant as far as his credibility on the issue is concerned. The court therefore does not believe the Claimant's evidence in this regard.
- vi. But the matter does not end there. This evidence is inextricably tied to the issue of whether there was a relationship in existence between the wife of the Claimant and ASP Edwards. Having regard the finding supra, it appears to the court that there is no evidence on the Claimant's case which can safely give rise to this finding of fact by the court whether directly or

by way of inference. The court therefore finds that the Claimant has not shown that there existed such an illicit relationship. The failure to produce this document which was in the Claimant's knowledge and/or possession and which would have assisted the Court on a very material issue is, in this case, fundamental.

- vii. The Claimant testified that a second statement was brought to him to sign. He gave evidence that although he could not read the statement because of darkness in the cell, he signed it. From a perusal of the statement the court notes that an error was also initialed by the Claimant despite him saying that he had only signed the statement in the darkness of the cell. Further, there appears to be no other credible evidence that another statement had been recorded from the Claimant.

13. In the circumstances, the court rejects the Claimant's version of events and finds therefore that the Claimant was not imprisoned.

14. Notwithstanding its findings above and in any event, the court finds that on the night of the 21st July 2010, the following facts were in the minds of the officers at the time:

- i. That the Claimant attended the station to report a domestic incident. That he admitted to hitting Mrs. Dillon-Scott (this appears in the statement taken from the Claimant at the police station).
- ii. That Mrs. Dillon-Scott attended the station and also made a report on the same night of a domestic dispute. That she presented at the station with a bleeding nose, which supported her report that she was hit by the Claimant. (By way of mention only, the medical report confirms a fractured nasal probably inflicted by a blunt force of moderate intensity

consistent with a cuff. This medical forms part of the Agreed Bundle of Documents).

- iii. That there were approximately 7 previous telephone reports to the Moriah Police station prior to the 21st July 2010 by Mrs. Dillon-Scott of incidents of domestic disputes with the Claimant being an aggressor in the reported situations. These reports form part of the Agreed Bundle of Documents.

15. Thus, there may have been reasonable cause for suspicion, and the officer, if he had arrested the Claimant, may have been justified in so doing. But it is clear to the court that the police sought to treat with the issue otherwise.

16. Having found that the Claimant was not imprisoned, the issues of breach of section 5(2)(c)(ii) of the Constitution and of the right to communicate with a friend or relative do not arise.

17. For these reasons therefore, the court would dispose of the Claim in the manner set out at paragraph 1 above.

Dated this 14th day of May 2013

Ricky Rahim

Judge