

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2015-02892

BETWEEN

MICHAEL DOUGLAS

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Ms. V. Gopaul instructed by Ms. T. Budhu for the claimant

Ms. K. Bello instructed by Mr. V Jardine for the defendant

Judgment

1. By Claim Form filed on the 25th August 2015, the claimant seeks damages inclusive of aggravated and/or exemplary damages for wrongful arrest, false imprisonment and malicious prosecution. The incident which gave rise to the claimant's claim occurred on the 26th August, 2011 during a State of Emergency when around midnight, armed police and regiment entered the claimant's home situate at No. 2 Eleventh Street, Beetham Gardens, Beetham without a search warrant. The claimant alleges that the police officers without reasonable and probable cause arrested him. He further alleges that he was not informed of the reason for his arrest.
2. Thereafter, the officers transported the claimant in an unmarked police vehicle to the Besson Street Police Station ("the station") where he was kept in a cell for several hours. Subsequently, the claimant was charged by Corporal Patrick Hinkson ("Corporal Hickson") with being a member of a gang, namely the Beetham gang. The claimant was then taken to the Port of Spain Magistrates' Court where he entered a plea of not guilty and the matter was adjourned to the 21st September, 2011. The matter was adjourned again to the 6th October, 2011.
3. According to the claimant, on the 6th October, 2011 the Director of Public Prosecutions discontinued all proceedings against him due to insufficient evidence. The claimant avers that the Magistrate thereupon dismissed the complaint against him.
4. By Defence filed on the 29th January, 2016 the defendant admitted that the claimant was arrested and charged on the 26th August, 2011 for the offence of being a member of the Beetham Gang. However, the defendant avers that at all material times Corporal Hickson had reasonable and probable cause to arrest, charge and prosecute the claimant. The defendant further avers that Corporal Hickson informed the claimant of the reason for his arrest. As such, it is the case of the defendant that Corporal Hickson acted lawfully and without malice in arresting the claimant.

Issues

5. It is settled law that in a claim for malicious prosecution, the claimant must prove (a) that the law was set in motion on a charge for a criminal offence by the defendant, (b) that he was acquitted of the charge or that the proceedings were otherwise determined in his favour, (c) that in instituting and continuing the prosecution the defendant did so without reasonable and probable cause, (d) that the defendant was actuated by malice and (e) as a consequence the claimant suffered damage.¹

6. In its submissions, the defendant submitted that based on the evidence, it cannot justify the claimant's arrest and detention as well as prove that the charge was laid with reasonable and probable cause. As such, the issues to be determined in this case are as follows;
 - i. Whether the claimant was informed of the reason for his arrest and his right to an attorney;
 - ii. Whether Corporal Hickson was actuated by malice when he set the law in motion against the claimant; and
 - iii. If it is found that Corporal Hickson was actuated by malice in setting the law in motion against the claimant, what is the appropriate measure of damages.

Case for the claimant

7. The claimant gave evidence and called one other witness, Keston Pierre.

8. The claimant is a Security Officer at the National Maintenance Training and Security Service. He is thirty-five years of age. He testified that on the 26th August, 2011 ("the said date") he was asleep at his home when he was awakened by someone calling at his back door. He could not recall the exact time he was awakened but it was sometime in the early

¹ Manzano v The Attorney General of Trinidad and Tobago Civil Appeal No.151 of 2011

part of the morning before dawn. The claimant's brother, Nigel Douglas ("Nigel"), Nigel's girlfriend, Tisha Yip Ying ("Tisha") and their baby were home with the claimant.

9. The claimant went to the living room of his house and looked through a window. He saw that there were police officers and soldiers in his back yard. He knew that some of the men were police officers and some were soldiers because they were wearing their respective uniforms. The claimant testified that the officers and soldiers had guns in their possession. He could have seen the officers and the soldiers because his house is situated at the corner of the street and there is a street light at the corner of the street which lit up his backyard.
10. One of the officers spoke to the claimant at his back door and asked whether Nicholas Douglas ("Nicholas") was at home. Nicholas is another brother of the claimant. The claimant testified that he informed the officer that Nicholas no longer lived at his house. According to the claimant, Nicholas moved out of his home approximately six years ago and was living in Diego Martin at the material time. During cross-examination, the claimant testified that Nicholas presently resides at his home. That Nicholas moved back home when his wife passed away which was about four to five years ago.
11. Thereafter, the officer asked the claimant to open his back door. When the claimant opened his back door, about five officers ran into his home. The claimant testified that the officers did not identify themselves. That they told him to lie on the floor, which he did. One of the officers asked the claimant whether anyone else was in the house and the claimant told him that Nigel and Tisha were asleep. The officers then went into Nigel's room and brought him out to the living room and told him to lie on the floor next to the claimant. The claimant did not see Tisha or the baby come out of Nigel's room.
12. Subsequently, the officers told the claimant and Nigel to get up, put their hands behind their heads and lean against one of the walls in the kitchen area. The claimant overheard one of the officers asking another officer "*what to do with them now?*" and the other officer said "*we carrying them down*". Thereafter officers told the claimant and Nigel to put on some clothes because they were "*going down*". The claimant overheard one of the officers telling Tisha to get some clothes for Nigel, which she did. Nigel stayed in the kitchen area

and changed and the claimant went to his room with one of the officers to put on his clothing. Whilst in the kitchen, the claimant and Nigel told the officers that they were not involved in anything illegal and they both asked why they were being arrested. The officers did not respond to the claimant and Nigel.

13. After the claimant and Nigel got dressed, the officers utilizing one handcuff, handcuffed them together and took them to the back of an open tray unmarked black, Navara. When they were in the tray of the vehicle, the claimant and Nigel again asked why they were being taken down to the station. At this point in time, one of the officers told them that they were going to do some enquiries. The claimant testified that the officers did not tell him why they wanted Nigel and he for enquires. He further testified that the officers did not tell him about his legal rights and privileges and about remaining silent.
14. Nigel and the claimant kept telling the police that they have never been arrested, they did not have any court matters and that they never had any problems with the law. The officers did not respond to the claimant and Nigel. During cross-examination, the claimant admitted that when he told the officers that he was never arrested before, same was a lie. That he was arrested in July, 2011 in connection with two murders which occurred in a part of Beetham called "Hell yard".
15. The officers then drove the claimant and Nigel to Eight Street in Beetham Estate. The claimant saw the officers go to Keon Quow's ("Keon") house. The officers knocked on Keon's door, entered his house and then brought out Keon, his brother Kevon Quow ("Kevon") and two of Keon's cousins, Akil Adams ("Akil") and Kenton Adams ("Kenton"). Keon, Kevon and one of the cousins were placed in the same van with the claimant and Nigel. The other cousin was placed in another van.
16. As the claimant was shocked when he saw Keon, Kevon, Akil and Kenton being brought out, he said out aloud "*there is no God*". One of the officers told the claimant, "*No trust me there is a God*". The claimant testified that he said the aforementioned because he knew Kevon, Keon, Akil and Kenton very well. The claimant and the four men grew up together

and so the claimant knew that the men never had any run-ins with the law. The claimant also knew that Keon was a footballer with WC Connection.

17. The officers then took the claimant and the rest of men to the Besson Street Police Station (“the station”). The officers told the claimant and the others to come out of the van and to walk into the station. Some of the officers directed them to line up and they were searched. They were then put into a cell which was about eight feet by six feet in size. The claimant testified that there were about six or seven other men already occupying the cell and that the officers kept bringing other men into the cell. Thereafter there was about thirty men occupying the cell.
18. When the claimant went into the cell, some of the men who were already there told him not to sit and/or lie down on their mattress. The claimant stood in front of the cell gate and held onto it to prop himself up as there was not much room in the cell.
19. Thereafter, the officers called each of the men by their names. The claimant saw that the officers were taking each of the men out of the cell to take fingerprints. The claimant heard someone saying that if he gave his finger prints, he would be charged. As such, the claimant did not give his finger print. He testified that the officers did not tell him anything about not giving his fingerprints.
20. The claimant remained in the cell until daylight. During that time, the officers did not tell him why he had been taken down to the station and placed in a cell. The claimant testified that he was also not informed that he could contact a family member or lawyer. When it was daylight, persons in the cell started getting on and the officers kept saying that they would process everyone and deal with each person.
21. Later that day, the claimant heard the officers calling out names one at a time. When he heard his name called, he went to the cell gate and an officer handed him a paper and said nothing. The claimant looked at the paper and found out for the first time that he was being charged for being a member of the Beetham Gang. The claimant was shocked because he was never in any gang. He testified that he could not find the paper and that he thinks he lost it when he was in jail.

22. The officers then took the claimant and the other men into a bus which had cells in it. The claimant was placed in a cell. He began crying at this time because he did not understand why the police was doing that to him. He could not remember the time the aforementioned took place but he testified that it was during daylight on the said date. He further testified that he did not know where the bus was taking him. That he heard some of the other men saying that they were going to jail. After about ten to fifteen minutes, the bus stopped. An officer ordered the claimant and the other men to exit the van. The claimant and the men were sent into a cell in a building. The claimant asked one of the other men in the cell where he was and the man replied that he was in a court cell.
23. When the claimant was in the court cell, the police gave him lunch in a box and he ate same because he was very hungry. He testified that that was the first time he got something to eat since the police took him from his house. No one gave him anything to drink at the station or in the court cell. After he ate, one of the officers by the court cell gate called out all of the men who were accused of being in the Beetham Gang and took them up a flight of stairs into a court room. The claimant testified that an officer read the charge and asked him if he was guilty or not guilty. He stated that he was not guilty.
24. Thereafter, the officer read out charges for the other men and they all said that they were not guilty. The Magistrate then told the claimant and the other men that they had to come back to court on the 21st September, 2011. The police then took the claimant and the other men back downstairs and put them into an Amalgamated van. There were cells in the Amalgamated van and the claimant was again placed into one of the cells. The claimant again did not know where he was going but heard some of the men in the van saying that they were going in jail. The claimant was shocked and thought it was madness.
25. The claimant and the other men were taken to the Golden Grove Prison (“the prison”). At the prison, one of the prison officers told the claimant and the men to co-operate with the prison officers and read out the prison rules to them. The prison officers then placed the claimant into a cell with another man who told the claimant that he was from Diego Martin and that it was not his first time in jail. The claimant told a prison officer that he did not

want to be in the cell with the man and the prison officer told the claimant that he had to stay there until everything was settled. A short while after, the prison officers brought another man into the cell so that there were three men in the cell.

26. According to the claimant, the cell had a lot of ants. There was a double decker bed, another bed and carpet on the ground. There was also a bucket in the cell instead of a toilet. While the claimant was in the cell, the prison officers brought tea and bread for him but he did not eat or drink anything because he was feeling sick. He also did not sleep during the first night. On another night, the two other men in the cell started telling the claimant things about being from Beetham which angered the claimant. Consequently, he asked a prison officer to be moved from the cell again but he was not moved.
27. The claimant was eventually moved to a cell upstairs after the two other men in his cell began fighting with him. During the fight, the claimant was cuffed in his mouth and one of his teeth broke. He testified that he did not receive any medical attention after the fight. During cross-examination, the claimant testified that he did not report the fight to the police after he was released from prison. He further testified during cross-examination that he did not seek medical attention after he was released from prison.
28. According to the claimant, the new cell in which he was placed was about six to seven feet in size. He testified that the concrete floor was dirty. There were black patches and stains on the floor. He further testified that the walls of the cell were very dirty. There were marks which looked like blood and all kinds of markings and drawings on the walls like bible verses, crosses, skeletons and chains around skeletons. Moreover, he testified that there was a bucket in the cell and that the smell from the bucket was disgusting. There were no beds in the new cell. There were two small mattresses on the ground. Three other men occupied the new cell with the claimant.
29. The claimant was kept in the new cell for about twenty-five days. Every day, the prison officers gave the claimant breakfast, lunch and dinner. Breakfast and dinner was two hops (one with cheese and one with butter) and a cup of tea. The claimant never drank the tea. He drank water which he filled in plastic bottles he found stuck in the cell gate. He filled

the bottles with water when the prison officers took him out for airing. For lunch, he got rice, peas sauce (because there were hardly any peas), sometimes buffalo wings and juice. The claimant ate the lunch on most days but he testified that the lunch was not tasty.

30. Although the claimant slept on the mattress every night, he testified that it was not a comfortable night's rest. He got a toothbrush, toothpaste and a piece of a towel from a prison officer. Every morning a prison officer took the claimant and another man out of the cell for them to brush their teeth and shower in a room. In the room there were toilets. The claimant testified that on one occasion the toilets were very dirty and could not flush and that he had to use the toilet in that condition. For the first five or six days, the claimant had to use the same clothes he was wearing until his aunt brought clothes for him. After he brushed his teeth and showered, the prison officers took him back to the cell.
31. Almost every day after breakfast, the prison officers took the claimant and the other men outside for airing in a big caged area on the prison compound. Airing was about twenty to twenty-five minutes per day.
32. Whilst in jail, the claimant asked one of the counsellors in prison to call his aunt to ask her to arrange a lawyer for Nigel and him for the next court date which was the 21st September, 2011. The claimant testified that he did so because when he was telling the other men that on the next court date, he would go to court and explain his situation to the Magistrate, one of the men told him that he has to get a lawyer as the lawyer was the one who would speak in court on his behalf. The claimant further testified that as he was frightened about the whole jail situation, he decided that the best thing to do was to hire a lawyer.
33. On the 21st September, 2011 the police took the claimant to court in an Amalgamated van. The other men who were also accused of being in the Beetham gang were also in the van with the claimant. At court, the claimant and his brother were represented by a lawyer, Mr. Cecil Pope ("Mr. Pope"). The claimant testified that as the officer who charged him was not present in court, the matter was adjourned to the 6th October, 2011. The claimant was taken back to the prison after the court hearing.

34. On the 6th October, 2011 the claimant and the other men who were accused of being in the Beetham gang were taken back to court. The claimant and his brother was again represented by Mr. Pope. The claimant testified that he was not sure of what exactly was taking place. That he heard that they were being released but as some of the men were saying the same thing the last time they were present in court, he did not want to get his hopes up.
35. Subsequently, he heard the Magistrate say that the case was dismissed. When this happened, the police told the claimant and the other men not to say anything and to stay calm. The police then took the claimant and the other men through a different door and let them go. The claimant's aunt was outside of the court and so she gave him some money to travel home. Thereafter, the claimant's lawyer got all the records from the Magistrates' court which confirmed that his matter was dismissed and the reason for its dismissal.² The claimant testified that he was shocked and angry that he was put through all of the aforementioned when there was insufficient evidence against him.
36. The claimant used to work as a welder until he was laid off from his job at the gas welding department at Master Serv in 2010.³ At the time of his arrest, the claimant was working part-time for Keston Pierre ("Keston") at several bakeries, Dermott's bakery in Barataria, Willie's bakery in Laventille and Keston's bakery in Port of Spain. During cross-examination, the claimant testified that Keston was the manager and not the owner of Dermott's bakery and Willie's bakery. That Keston was the owner of Keston's bakery.
37. At the bakeries, the claimant mixed dough and filling for pastries rolled and filled the dough, placed the pastries in the oven and saw about the pastries when same were taken out of the oven. He worked about eight hours a day for about two days during the week and he sometimes worked on weekends. He was paid \$350.00 to \$600.00 in cash per day. During cross-examination, the claimant testified that he could have earned less than \$350.00 or more than \$600.00 a day. That he did not earn a fixed sum. The amount of money he was paid depended on how much work he did on the day.

² A copy of the Magistrates' court records were attached to the claimant's witness statement at "M.D.1".

³Copies of his certificates in welding were attached to his witness statement at "M.D.2".

38. The claimant testified that when he was arrested, he lost all of his income from his job at the bakeries. He further testified that as Keston did not provide him with any documents such as pay slips, he does not have any proof to substantiate the monies he was paid for working at the bakeries. During cross-examination, the claimant testified that he never paid taxes or made national insurance contributions whilst working at the bakeries.
39. When he came out of jail, the claimant visited Keston and asked him for a job. Keston refused to give the claimant a job and told the claimant that he did not want any confusion with the police coming by the bakeries.
40. The claimant testified that he kept looking for a job but that he was unable to secure employment for about three to four months. He signed up with the Colour Me Orange Program (“the program”) and got into the program around November or December, 2011. The claimant was placed to work at a place called Pleasant Terrace in Beverly Hills, Laventille. When he got to Pleasant Terrace, the claimant recognized some of the men who were in prison with him. The men walked up to the claimant and asked him where he was from. The claimant lied and told the men that he was from Barataria because he was scared that the men thought that he was from the Beetham gang and that they would kill him right there. As one of the men told another man to get a gun, the claimant ran off and never returned. The program then placed the claimant in the Beetham area. He was there for about three months and earned \$2,000.00 per fortnight doing welding.
41. One night when the claimant was off duty but still assigned to the program, he went into Port of Spain to buy a meal. In Port of Spain, he saw some of the men from Pleasant Terrace. The men began running towards the claimant and although the claimant ran off, the men caught him and cuffed him. He managed to get up and ran down to City Gate where he got into a maxi and went home. The next morning, the claimant reported the incident to the supervisors of the program. He also made a report to the station and the officers there told him he should move out of Beetham and live in south. The officers were laughing when they told the claimant the aforementioned. During cross-examination, the

claimant testified that he did not go back to the station to get a receipt for the report he made.

42. The claimant testified that before he was arrested, he could have gone anywhere in Trinidad without being threatened. That since he was charged, he is afraid for his life because people think that he is a part of the Beetham gang. The claimant does not feel safe anymore and avoids Laventille.

43. After the program, although the claimant was looking for jobs, he was out of a job for about two months. One of the places the claimant went to look for a job was a car washing company. The owner of the car washing company asked the claimant whether he was ever in jail and the claimant responded in the affirmative and told the owner what had happened. The claimant was not given the job.

44. In May, 2012 he applied for and got through with a security job at MTS. He had to get a police background check and do a drug test before getting the job. He worked for \$12.50 per hour when he now started. He now works for \$15.00 per hour or an average of \$1,890.00 per fortnight.⁴ The claimant is attempting to obtain employment as a SRP but he testified that he does not know whether he would be so employed since he was charged with being in a gang.

45. The claimant testified that since his arrest, the people in and outside of his community treat him differently. Some people laugh at him and others including his neighbours avoid him. He feels discriminated against because of the manner in which he is treated.

46. The claimant testified that he never “limed” on the block in Beetham because he was much older than the boys who did that sort of thing. That when he saw the boys liming on the block, he did not stop to talk to them. In fact, he tried to get his brother, Nicholas to stay away from a man whose name was called in several murders, but Nicholas never listened to him. Further, the claimant testified that he never ran away from the police when they approached him. That there were times when the police searched him on his way home

⁴ The claimant attached a copy of a job letter and two pay slips to his witness statement at “M.D.3”.

from the bakery. The police always let the claimant go after they searched him. During cross-examination, the claimant testified that he was searched in the vicinity of Beetham Gardens. That he was awaiting to cross the bus route to reach Beetham when he was searched by the officers.

47. Prior to his arrest on the said date, the claimant was arrested in July 2011 when there were two murders in a part of Beetham called “Hell yard”. The claimant testified that although he had no information to give to the police, the police took him down to the CID where his photograph was taken and he was placed in a cell for seventy-two hours. Nigel, Keon and Kevon were also taken down to the CID with the claimant. They were all released after seventy-two hours.
48. During cross-examination, the claimant testified that he did not know Corporal Hickson prior to his arrest on the said date and that he still does not know Corporal Hickson. He further testified that he did not know whether Corporal Hickson was conducting patrol and surveillance exercises in reference to him or what investigations Corporal Hickson would have conducted on him prior to his arrest.
49. **Keston Pierre** (“Keston”) lives at No. 14 Erthig Road, Belmont. He testified that in 2011 he was the manager of three bakeries, Dermott’s bakery located at No. 40 First Avenue, Barataria, Willie’s Bakery located at No. 10 St. Joseph Old road, Laventille and Keston’s Bakery located at No. 50 Observatory Street, Port of Spain.
50. During cross-examination, Keston testified that presently he is only managing his bakery, that the name of his bakery was changed to K&S bakers and that his bakery is now located at his place of residence. He further testified during cross-examination that he only makes pies. He wholesales his pies to his customers. He also testified during cross-examination that he does have receipt books and books of records but that he did not present same to the court.
51. Keston testified that he knows the claimant. That about eight to nine years ago he first hired the claimant to work as a baker at Dermott’s Bakery. At Dermott’s Bakery, the claimant mixed the dough for the breads and the pastries, rolled and filled the pastry dough, placed

the pastries in the oven and saw about the pastries after taking some out of the oven. According to Keston, the claimant was a very good baker. As such, when Keston saw the claimant's work at Dermott's bakery, he hired the claimant to work at Willie's bakery and Keston's bakery. The claimant did the same work at the other two bakeries. Keston further testified that the claimant worked part-time for about eight hours each day at the bakeries.

52. Keston paid his workers based on the amount of work they did. In his witness statement, he testified that he used to pay the claimant \$350.00 to \$600.00 in cash per day. During cross-examination, Keston testified that he would have paid the claimant for working at his bakery but that he would not have been the person to pay the claimant for working at Dermott's and Willie's Bakery. That at Dermott's and Willie's bakery, he (Keston) would report to his bosses how the claimant worked and the claimant would get paid from the bosses. As such, during cross-examination Keston testified that he could not state exactly how much pay the claimant received.

53. Moreover, during cross-examination Keston testified that as he was the main man in the bakeries, he was paid \$600.00 to work on a Sunday. That his pay on a Sunday was more than that which was paid to him on Monday through Friday. He further testified that the workers below him in rank (which included the claimant) would get paid less than he did.

54. According to Keston, the claimant worked at the bakeries until late August, 2011. Keston testified that when the claimant did not show up for work in late August, he found it was strange and so started to ask around and found out that the claimant was arrested for being a member of a gang. When Keston heard the aforementioned, he said to himself that the police made a mistake as he knew that the claimant lived in Beetham but did not know the claimant to be involved in any gangs or any illegal activity.

55. During the time when the claimant was in jail, Keston found other persons to do the work which the claimant did. Keston testified that when the claimant came out of jail, he came to him and asked for his job. Keston told the claimant no because he (Keston) did not want any confusion with the police coming by the bakeries.

The case for the defendant

56. The defendant called one witness, retired Sergeant of Police, Patrick Hickson (“Hickson”). Hickson was in the police service for approximately thirty years. On or about the 14th August, 2011 he was stationed at the Besson Street Police Station (“the station”) and was attached to the Criminal Investigation Department (“CID”) for approximately fourteen years. He also worked in the Laventille area since 2008 when he joined the Repeat Offenders Program. During cross-examination, Hickson testified that he was stationed at the station in 2008 and posted to the CID in 2010. Hickson mentioned the 14th August, 2011 to show that he was at the station prior to the 26th August, 2011.
57. As a police officer, Hickson’s duties included patrols and conducting investigations. During cross-examination, Hickson testified that everything that occurred during his mobile patrols were reported in the station diary on his return to the station. That even if nothing occurred whilst he was on patrol, same would be reported in the station diary.
58. As a result of his work at the station, by the 26th August, 2011 he had come to know several persons who were engaged in criminal activities in the Besson Street district. Hickson’s knowledge came from receiving information from informants, conducting investigations into criminal activity and doing patrols several times per week in the district. Hickson has also arrested and charged several persons in the district. Those persons included Keon, Akil and Kenton. As such, Hickson testified that he honestly believed that the claimant was a member of a gang.
59. Hickson observed several persons including the claimant gathered together in groups of three to seven at different locations in the district. He testified that on many occasions whilst on mobile patrol in the district with other officers, he observed the claimant and other members of those groups look in the direction of the police vehicle and then disperse in different directions between 10th and 13th Street, Beetham Gardens.
60. Hickson testified that based on his experience as a police officer working and patrolling in the Laventille/Beetham area, he considered and honestly believed those persons in the

groups were members of a gang. Further, from his observations, several of those gang members began associating with each other regularly within the Besson Street Police District from about 2007. Hickson also testified that it appeared to him that those men were not engaged in lawful employment. He came to that conclusion as the men were gathered at varying hours of the day and night. During cross-examination, Hickson testified that he did not know that the claimant worked at several bakeries. That he did not follow the claimant to ascertain whether or not the claimant was in fact employed anywhere.

61. On several occasions, Hickson observed individuals including Keon and the claimant liming together with other known gang members and affiliates in the Beetham area. Hickson observed those individuals gathered at all hours of the day and night in narrow streets and alleys. At times, Hickson along with other police officers approached the men and on each occasion, the claimant and his cohorts would disperse in different directions.
62. Hickson testified that on several occasions a search of the areas from which the escaping men fled, would reveal narcotics, ammunition and sometimes firearms. Consequently, it was the testimony of Hickson that as a result of what he observed about the claimant and his cohorts, the information gleaned from informants and other police officers, he honestly believed that the claimant was a part of the Beetham Gang. During cross-examination, Hickson admitted that the information received from informants was not before the court. He testified that he did not want to reveal his informants.
63. Hickson produced certain station diary extracts.⁵ Upon perusing those extracts, the court found that there was no entry in relation to the claimant running away from the police and/or narcotics or ammunition or firearms being found in the area which the claimant was allegedly liming. During cross-examination, Hickson admitted that did not provide this court with any station diary extract to show that when the claimant was seen in vicinity of the Beetham he ran away and that when the area was searched same revealed narcotics, ammunition and sometimes firearms.

⁵ Copies of station diary extracts from the 16th to the 26th August, 2011 were attached to Hickson's witness statement at "P.H.1".

64. On the 26th August 2011, Hickson was on duty in the Beetham area in an exercise spearheaded by ASP Grant and Inspector Sigh (now deceased). During cross-examination, Hickson testified that ASP Grant instructed him to go out and arrest suspected gang members. The exercise began on the 25th August, 2011 and was completed on the 26th August, 2011. During the exercise, Hickson and other police officers attended the homes of suspected gang members and conducted searches.
65. Hickson testified that as the claimant was a suspected gang member, the claimant's home was searched during the exercise. Hickson introduced himself to the claimant and showed him his Trinidad and Tobago Police Identification Card. Hickson also told the claimant that he suspected that he (the claimant) was a member of a gang which was a criminal offence. Hickson cautioned the claimant and informed him and Keon of their legal rights and privileges. He also introduced the claimant and the other suspected gang members to, Inspector Singh and Corporal Narine (who were the other officers that accompanied Hickson on the exercise). According to Hickson, the group of men remained silent.
66. During cross-examination, Hickson testified that he suspected that the claimant was a gang member for over two years. That although he suspected that the claimant was a gang member for a certain period, he did not arrest him for being a gang member prior to the said date. Further during cross-examination, he testified that the only reason he arrested the claimant on the said date was because he was given a directive to so do by ASP Grant.
67. Hickson testified that the claimant and the other suspected gang members were taken to the station. At the station, Hickson informed the men that it was his intention to charge them for the offence of being gang members contrary to Section 5(1)(a) of the Anti-Gang Act. Hickson further testified that he cautioned the men and informed them of their legal rights again. According to Hickson, the claimant made no requests.
68. During cross-examination, Hickson testified that he knew that he did not have any information to charge the claimant for being a gang member but that he did so anyway on instructions from his superiors. Further, during cross-examination Hickson testified that when he charged the claimant on instructions from his superiors, he did not do so on his

personal belief that the claimant was guilty of an offence. That he charged the claimant because he was informed by ASP Grant and other senior officers that additional evidence would be provided by other agencies including the CGIU. Hickson was never privy to the information from the other agencies.

The offence

69. The claimant was charged with being a member of a gang pursuant to section **5 (1) (a) of the Anti-Gang Act No. 10 of 2011** which provides as follows;

“5. (1) It is hereby declared that gangs are unlawful and any person—

(a) who is a member of a gang; or

(b) who, in order to gain an unlawful benefit, professes to be a gang member when in fact he is not, whether by telling anyone that he is a gang member or otherwise suggesting to anyone that he is a gang member, commits an offence and is liable on summary conviction to imprisonment for ten years and on any subsequent conviction on indictment to imprisonment for twenty years.”

70. **Section 4** of the Anti-Gang Act defines “gang”, “gang member” and “gang-related activity” as follows;

““gang” means a combination of two or more persons, whether formally or informally organized, that, through its membership or through an agent, engages in any gang related activity;

“gang member” means a person who belongs to a gang, or a person who knowingly acts in the capacity of an agent for or an accessory to, or voluntarily associates himself with any gang-related activity, whether in a preparatory, executory or concealment phase of any such activity, or a person who knowingly performs, aids, or abets any such activity;

“gang-related activity” means any criminal activity, enterprise, pursuit or undertaking in relation to any of the offences listed in the First Schedule acquiesced in, or consented or agreed to, or directed, ordered, authorized, requested or ratified by any gang member, including a gang leader”

71. **Section 12(1)** of the Anti-Gang Act provides as follows;

“12(1) A police officer may arrest without a warrant a person whom he has reasonable cause to believe to be a gang member or whom he has reasonable cause to believe has committed an offence under this Act.”

72. Further, **section 13(1)** of the Anti-Gang Act states as follows;

“13(1) Notwithstanding any law to the contrary, a police officer may, without a warrant, detain for a period not exceeding seventy-two hours a person whom he reasonably suspects of having committed an offence under this Act without charging him for the offence.”

73. **Sections 6 & 7 of the Bail Amendment Act No. 11 of 2011** provided as follows;

“(6) ... a Court shall not grant bail to a person who is—

(a) over the age of eighteen years; and

(b) charged with an offence under the Anti-Gang Act.

(7) Subject to subsection (8), where a person is charged with an offence mentioned in subsection (6) and brought before the Court but no evidence has been taken within one hundred and twenty days of the reading of the charge, that person is entitled to make an application to a Judge for bail.”

74. In the Court of Appeal case of **Kevin Stuart v The Attorney General of Trinidad and Tobago**⁶, Bereaux JA at paragraphs 17 to 21 had the following to say in relation to the type of evidence necessary to establish a case of being a member of a gang under the Anti-Gang Act;

⁶ C.A. No. P162 of 2015

“[17] ...It is readily apparent from these provisions that proving gang membership in a court of law is no slam dunk. It requires a careful compilation of the evidence showing how the gang is organised, how the gang activity is perpetrated through gang members and their respective roles in such activity. Evidence at trial must be carefully led to show the nexus between the gang, the members and the activity. In a case where the gang-related activity relates to narcotics, evidence of actual sales of the narcotics is required to prove the gang-related activity. Mere surveillance without more may not suffice. It is not enough to simply observe the accused making “interactions” with other persons. The evidence must be that narcotics were sold by the accused to someone. This would include proof of exchange of money and the actual price paid. Undercover detection may be necessary. The best evidence would no doubt be that of a former member of the gang who has direct knowledge of its activities.

[18] Taking into account the definitions of gang, gang member and gangrelated activity, it was necessary for the appellant to show that PC Phillips had a reasonable basis for suspecting that:

(i) Stuart belonged to a gang consisting of his wife, Kerwin Rocke and himself; and that he, in combination with his wife, or Kerwin Rocke, or both, engaged in the sale of narcotic drugs (being a gang-related activity) either through all or any of them or through an agent;
(ii) or that Stuart acted as an agent for, or as an accessory of, the gang, or voluntarily associated himself with the gang-related activity (the sale of a narcotic drug) (i) or that Stuart acquiesced in, consented or agreed to, or directed, ordered, authorised, requested or ratified the sale of narcotics.

[19] To prove reasonable suspicion it is important to show a nexus between the gang members, in this case, Stuart, Stuart’s wife and Kerwin Rocke. It is necessary to provide evidence showing that there was a reasonable basis for suspecting the three alleged gang members were acting in concert to sell a narcotic drug. Evidence of their respective roles as gang members in the activity would also be required. Was he responsible simply for selling the narcotics? Was he responsible for making contact with purchasers? Was the

wife's role merely to provide the facade of legitimacy by selling in the shop? What role did Rocke play? It is not enough simply to show Stuart acting alone (unless the evidence also pointed to agency). If that was the only evidence, then he should have been arrested for the sale of narcotics and not for being a gang member.

[20] The best evidence no doubt would be information emanating from a former member of the gang intimately acquainted with Stuart's role, by virtue of his own participation in the activity or, a confession from Stuart himself. If a former gang member is the source of that information he could be identified as a "former gang member" without necessarily naming him so as to allow the court to judge the basis of reasonable suspicion. [21] But details of the gang activity and gang membership, the nexus between the activity and the gang member and his role in the gang and in the activity, are required..."

Issue 1 - whether the claimant was informed of the reason for his arrest and his right to an attorney

75. The claimant testified that he was not informed of the reason for his arrest even though he asked the officers why he was being arrested. He further testified that the officers did not identify themselves. That upon entering his home, the officers instructed him to lie on the floor. Thereafter, Nigel was brought out and placed to lie down on the floor next to the claimant. The officers then told the claimant and Nigel to put their hands behind their heads and lean against the wall. Subsequently, the claimant and Nigel were handcuffed, taken to the station and placed in a cell.

76. According to the evidence of the claimant, it was only after he was placed in the cell at the station he found out that he was being charged for being a member of a gang. Whilst in the cell, the claimant was handed a paper by an officer which informed him that he was being charged for being a gang member. The claimant also testified that he was not informed about legal rights, privileges and/or about remaining silent.

77. Conversely, Hinkson testified that during the exercise when the claimant's house was searched, he introduced himself to the claimant and also told the claimant that he (Hickson)

suspected that he (the claimant) was a member of a gang. Hickson further testified that he cautioned and informed the claimant of his legal rights and privileges. That at the station, he also informed the claimant of his intention to charge him with the offence of being a gang member contrary to section 5(1)(a) of the Anti-Gang Act and again cautioned and informed the claimant of his legal rights.

78. Upon analyzing the evidence, the court finds that the claimant's version of events is more probable. In his witness statement, Hickson testified that he honestly believed that the claimant was a member of a gang when he charged him. However, during cross-examination Hickson testified that the only reason he arrested the claimant on the said date was because he was given a directive to so do by his seniors. That he knew he did not have any information to charge the claimant for being a gang member. In the court's view, this inconsistency within the testimony of Hickson was a material one which affected his credibility.

79. Consequently, the court finds that on a balance of probabilities the claimant's evidence is more credible in this regard. As such, the court finds that the claimant was not informed of the reason for his arrest at the time of his arrest and that he was also not informed of his right to an attorney.

Issue 2 – *Malice*

80. Malice may be inferred from the absence of reasonable and probable cause and the claimant is asking the court to so infer. However, the defendant submitted that in this case malice cannot be inferred from the absence of reasonable and probable cause because the claimant has failed to prove that the prosecution against him was initiated dishonestly and/or for any ulterior or improper motive. It is pellucid to this court that the mere lack of reasonable and probable will not equate to malice in every case.

81. Mendonça JA in *Sandra Juman v The Attorney General*⁷ at paragraph 25 in treating with the issue of malice stated as follows;

“Malice must be proved by showing that the police officer was motivated by spite, ill-will or indirect or improper motives. It is said that malice may be inferred from an absence of reasonable and probable cause but this is not so in every case. Even if there is want of reasonable and probable cause, a judge might nevertheless think that the police officer acted honestly and without ill-will, or without any other motive or desire than to do what he bona fide believed to be right in the interests of justice: Hicks v Faulkner [1987] 8 Q.B.D. 167 at page 175.”

82. In the Privy Council case of *Williamson v Attorney General of Trinidad and Tobago*,⁸ Lord Kerr stated the following in relation to malice at paragraphs 11 to 13;

“[11] ...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 to justice: Stevens v Midland Counties Railway Company (1854) 18 JP 713, 23 LJ Ex 328, 10 Exch 352, 356 per Alderson B and Gibbs v Rea [1998] AC 786, 797D, [1998] 3 WLR 72, 1 OFLR(ITELR) 719. 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, [2013] 4 All ER 8; Gregory v Portsmouth City Council [2000] 1 AC 419; 426C, [2000] 1 All ER 560, [2000] LGR 203; 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.

⁷ Civil Appeal No. 22 of 2009

⁸ [2014] UKPC 29

[13] Malice can be inferred from a lack of reasonable and probable cause – *Brown v Hawkes* [1891] 2 QB 718, 723, 60 LJQB 332. 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.”

83. Further, in the Privy Council decision of *Sandra Juman v The Attorney General of Trinidad and Tobago*,⁹ Lord Toulson at paragraph 18 had the following to say about malice;

“The essence of malice was described in the leading judgment in Willers v Joyce at para 55: “As applied to malicious prosecution, it requires the claimant to prove that the defendant deliberately misused the process of the court. The most obvious case is where the claimant can prove that the defendant brought the proceedings in the knowledge that they were without foundation ... But the authorities show that there may be other instances of abuse. A person, for example, may be indifferent whether the allegation is supportable and may bring the proceedings, not for the bona fide purpose of trying that issue, but to secure some extraneous benefit to which he has no colour of a right. The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court’s process.”

84. Moreover, Mendonça JA in *Manzano* supra stated the following at paragraph 47;

“The proper motive for a prosecution is a desire to secure the ends of justice. So in the context of malicious prosecution a defendant would have acted maliciously if he initiated the prosecution through spite or ill-will or for any other motive other than to secure the ends of justice. It follows therefore that even if a claimant cannot affirmatively establish spite or ill-will or some other improper motive, he may still succeed in establishing malice if he can show an absence of proper motive.”

⁹ [2017] UKPC 3

Discussion and findings

85. The defendant in applying the case of *Kevin Stuart* supra to this case accepted that the evidence of Hickson did not demonstrate any nexus between the claimant and the Beetham gang, the members and the activity. The defendant further accepted that the claimant's role in the Beetham gang was not made out on the evidence. Consequently, the defendant conceded that it would not be able to prove that the charge was laid with reasonable and probable cause. However, the defendant argued that the claimant has failed to prove malice as detailed in his statement of case. That the evidence of Hickson was not indicative of malice. The claimant is relying on an inference of malice or improper motive to be drawn from 1) a lack of honest belief on the part of Hickson and 2) the absence of reasonable and probable cause.
86. It is well established that the proper motive for a prosecution is a desire to secure the ends of justice. Consequently, if Hickson had no evidence to charge the claimant then it cannot be said that Hickson had an honest belief that the claimant was guilty of the offence of being a member of a gang and so malice may be inferred since it can be said that the prosecution against the claimant was initiated for some other motive than to secure the ends of justice.
87. Upon an examination of the evidence of Hickson, the court finds that there was no evidence to lead it to believe that Hickson had an honest belief in the guilt of the claimant to charge him with being a member of gang. This much is pellucid.
88. Hickson testified that he observed several persons including the claimant gathered together in groups of three to seven at different locations in the district. He further testified that on many occasions whilst on mobile patrol in the district with other officers, he observed the claimant and other members of those groups look in the direction of the police vehicle and then disperse in different directions between 10th and 13th Street, Beetham Gardens. No dates and times of the mobile patrols were given.
89. Additionally, Hickson testified that based on his experience as a police officer working and patrolling in the Laventille/Beetham area, he considered and honestly believed those

persons in the groups were members of a gang. He further testified that he came to the conclusion that the claimant and the other men in the groups were not engaged in lawful employment as the men were gathered at varying hours of the day and night. During cross-examination, Hickson testified that he did not know that the claimant worked at several bakeries and that he did not follow the claimant to ascertain whether or not he was in fact employed anywhere.

90. Moreover, Hickson testified that on several occasions he observed individuals including the claimant liming together with other known gang members and affiliates in the Beetham area. Hickson failed to identify those known gang members and/or the basis upon which he knew them to be gang member. He testified that he observed those individuals gathered at all hours of the day and night in narrow streets and alleys. That at times when he along with other police officers approached the men, the claimant and his cohorts would disperse in different directions. He further testified that on several occasions a search of the areas from which the escaping men fled, would reveal narcotics, ammunition and sometimes firearms. During cross-examination, Hickson admitted that he did not provide this court with any station diary extract to substantiate his evidence that when the claimant was seen in vicinity of the Beetham he ran away and that when the area was searched same revealed narcotics, ammunition and sometimes firearms.

91. In his witness statement, Hickson testified that as a result of what he observed about the claimant and his cohorts, the information gleaned from informants (which was not before the court) and other police officers, he honestly believed that the claimant was a part of the Beetham Gang. However, during cross-examination, Hickson testified that he knew that he did not have any information to charge the claimant for being a gang member but that he did so anyway on instructions from his superiors. Further, during cross-examination Hickson testified that when he charged the claimant on instructions from his superiors, he did not do so on his personal belief that the claimant was guilty of an offence. That he charged the claimant because he was informed by ASP Grant and other senior officers that additional evidence would be provided by other agencies including the CGIU. Hickson was never privy to the information from the other agencies.

92. Based on the evidence of Hickson, one questions why this charge was laid. In face of Hickson's admission that he was not privy to the information known to his superiors when he acted on their instructions to charge the claimant demonstrates to this court that Hickson did not and could not have had an honest belief in the claimant's guilt or the merits of the case against the claimant. There was absolutely no foundation based on the evidence to charge the claimant.

93. As such, the court finds that the evidence of Hickson fails to provide any explanation as to the motive for claimant's arrest, charge and prosecution. In the court's view, the evidence in this case quite clearly demonstrates that Hickson misused the process of the court by bringing criminal charges against the claimant since those charges were brought in the knowledge that same clearly were without foundation. Consequently, the court finds that on the balance of probabilities the claimant has demonstrated that in the circumstances of this case malice should be inferred from the lack of reasonable and probable cause. As such, the court finds that claimant was maliciously prosecuted and so he is entitled to damages.

Issue 2 – Damages

General damages

94. Damages in cases of malicious prosecution are awarded under the three following heads;

- 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.¹⁰

95. In ***Thaddeus Bernard v Ouashie***,¹¹ de la Bastide C.J. stated the following in relation to aggravated damages;

¹⁰ See Thadeus Clement v the Attorney General of Trinidad and Tobago Civ. App. 95 of 2010 at paragraph 12, per Jamadar JA.

¹¹ CA No 159 of 1992.

“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages, that is, damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received. Under this head of what I have called ‘mental suffering’ are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages I think that practice should be discontinued.”

96. The claimant was arrested and taken to the Besson Street Police Station (“the station”) on the 26th August, 2011. He testified that at the station, he was placed in a crowded cell and that he remained in that cell until daylight. He further testified that he was not told that he could contact a family member or a lawyer and that he only found out why he was arrested when he was at station in the cell. After the claimant was taken to the Magistrates’ Court, he was taken to the Golden groove prison where he remained incarcerated until the 6th October, 2011. The claimant went into great detail (as set out above in his evidence) about the conditions of the cells he was kept in at the prison and the experiences he encountered at the prison. The claimant’s evidence of the conditions of the prison was unchallenged.
97. Additionally, the claimant testified that as a result of his arrest, persons in and out of his community started treating him differently. He also testified that since he was arrested he fears for his life as persons think that he is a part of the Beetham gang. As such, it was his testimony that he does not feel safe anymore and avoids Laventille because of the incidents which occurred with the men from Pleasant Terrance.
98. The defendant relying on Kevin Stuart supra submitted that a similar award of \$50,000.00 for false imprisonment is applicable in this case. The defendant further submitted that the sum \$150,000.00 is an appropriate figure to be awarded for general and aggravated damages. In arriving at that figure, the defendant relied on the following cases;

- i. **Ted Alexis v The Attorney General**¹², Kangaloo J - cocaine was planted on a plaintiff and he was imprisoned for two and a half months, he was awarded \$100,000.00 for unlawful arrest, false imprisonment and malicious prosecution, inclusive of aggravated damages and \$25,000.00 as exemplary damages to mark the court's disapproval of the officer's conduct.
- ii. **Mark Blake v The Attorney General of Trinidad and Tobago**¹³, Boodoosingh J - the claimant was detained for a period of three and a half years. The Defendant offered no evidence and on successfully claiming damages for malicious prosecution, the Court awarded the claimant the sum of \$450,000.00 which included aggravated and exemplary damages.
- iii. **Uric Merrick v The Attorney General of Trinidad and Tobago and Ors**¹⁴, Smith J.A. - the Appellant was imprisoned for twenty-nine days. The Court of Appeal noted that in shorter but comparable cases awards of \$150,000.00 to 280,000.00 would be appropriate.
- iv. **Keon Ouow v The Attorney General**¹⁵, Donaldson-Honeywell J - the claimant was imprisoned for thirty-five days under similar conditions and sued for damages for false imprisonment and malicious prosecution. The defendant's witness failed to attend Court for the trial. Prior to his arrest the claimant was a national footballer and his arrest and charge was broadcasted in the media. He was awarded the sum of \$200,000.00 in general and aggravated damages and \$30,000 for exemplary damages.

99. The defendant submitted that although the claimant claimed to have suffered a loss of reputation and injury to feelings, he provided no evidence from any supporting witness to corroborate same. The defendant further submitted that the claimant's situation herein is distinguishable from that of the claimant in **Keon Ouow** supra who prior to his arrest was a footballer with national acclaim. Moreover, the defendant submitted that as this claimant had been arrested on a previous occasion and spent seventy-two hours in custody in

¹² HCA No. S 1555 of 2002

¹³ CV2010 – 03388

¹⁴ CA No. 146 of 2009

¹⁵ In CV 2015 0 02893

connection with a murder investigation, the injury to his reputation and damage to feelings will be significantly less than a person with an unblemished record or a person who has not been arrested and held in custody.

100. According to the claimant, an appropriate award for his wrongful arrest, false imprisonment and malicious prosecution is \$250,000.00. The claimant submitted that the starting point of an appropriate award to compensate him fairly for his wrongful arrest, false imprisonment and malicious prosecution is \$200,000.00. In so submitting, the claimant relied on the case of *Keon Quow* supra wherein the length and conditions of incarceration were the same as in the instant case.

101. The claimant further submitted that the distinguishing feature in the instant case which justifies a higher award is that, unlike the Keon Quow's case, his (the claimant herein) reputation has been adversely affected since he was arrested and charged for being a gang member. According to the claimant, his unchallenged evidence is as follows;

- i. Prior to his arrest, he could have gone anywhere without being threatened;
- ii. After he was released from prison, there were two incidents in which he was accosted by men from Laventille;
- iii. He fears for his life and has had to avoid Laventille because of the incidents with the aforementioned men; and
- iv. He became a liability to his employer.

102. In determining a reasonable figure for general damages, the court also considered the followings cases;

- i. *Darryl Bishop v The Attorney General*¹⁶ - this court awarded the claimant who was detained for a period of forty-five days (after being charged with the offence of being a member of a gang) the sum of \$250,000.00 in general damages inclusive of aggravated damages. The claimant gave great detail about his experiences at the

¹⁶ CV2015-03348

prison and testified that as a result of his arrest, he was humiliated, embarrassed, suffered considerable distress, inconvenience, loss and damage.

- ii. **Marvin Pascall and another v The Attorney General of Trinidad and Tobago**,¹⁷ Kokaram J - the claimants who were detained for a period of twenty-five days (after being charged with the offence of being members of a gang) was awarded \$70,000.00 in general damages inclusive of aggravated damages.
- iii. **Onnell Dyer v The Attorney General of Trinidad and Tobago**,¹⁸ Kokaram J - the claimant who was detained for a period of thirty-four days (after being charged with the offence of being a member of a gang) was awarded \$40,000.00 in general damages for malicious prosecution. In this case, His Lordship stated that the claimant's evidence in relation to damages was meagre

103. Having regard to the evidence before the court and the awards in similar cases the court will make an award of \$200,000.00 in general damages for wrongful arrest, false imprisonment and malicious prosecution inclusive of an uplift for aggravation.

Exemplary damages

104. Exemplary damages are awarded in cases of serious abuse of authority. The function of exemplary damages is not to compensate but to punish and deter. The case of **Rookes v Barnard**¹⁹ established that exemplary damages can be awarded in three types of cases namely;

- i. Cases of oppressive, arbitrary or unconstitutional action by servants of the Government;
- ii. Cases where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and
- iii. Cases in which exemplary damages are expressly authorized.

¹⁷ CV2015-03142

¹⁸ CV2015-03207

¹⁹ (1964) AC 1129

105. The court agrees with the submissions of the claimant that this is a suitable case for an award of exemplary damages. The actions of Hickson in arresting the claimant without reasonable and probable cause, continuing the proceedings until the 6th October, 2011 even though he knew he did not have sufficient evidence to proceed and subjecting the claimant to unsanitary prison conditions and deprivation of his liberty were arbitrary, oppressive and unconstitutional.

106. The claimant submitted that the sum of \$30,000.00 in exemplary damages ought to be awarded. The court considered the cases of Darryl Bishop supra, Keon Quow supra and Marvin Pascall supra wherein exemplary damages in the sum of \$50,000.00, \$30,000.00 and \$20,000.00 respectively were awarded. The court finds that in the circumstances of this case an award of \$30,000.00 in exemplary damages is reasonable.

Special Damages

107. Special damages must be specifically pleaded and proven.²⁰ The claimant testified that at the time of his arrest, he was working at three bakeries for about eight hours a day for two days a week and that he sometimes worked on weekends. Two of the bakeries were managed by Keston and one was owned by Keston. The claimant further testified that he received \$350.00 to \$600.00 in cash per day but that he did not have any documents to substantiate those payments. During cross-examination, the claimant testified that he could have received less than \$350.00 and more than \$600.00 for a day's work but that his pay was never less than \$300.00.

108. The claimant's witness, Keston, testified that he paid the claimant \$350.00 to \$600.00 in cash every day. However, during cross-examination Keston testified that when the claimant worked at the bakeries he (Keston) managed he did not know how much the

²⁰ See *Grant v Motilal Moonan Ltd* (1988) 43 WIR 372 per Bernard CJ and reaffirmed in *Rampersad v Willies Ice Cream Ltd*. Civ App 20 of 2002.

claimant was actually paid. Keston further testified during cross-examination that “\$300.00 is correct wages for a fella...”

109. Accordingly, the claimant’s evidence in relation to his loss of earnings was inconsistent. The court would therefore be engaging in speculation if it granted the claimant’s claim for loss of earnings. As such, the court finds that the claimant’s claim for special damages in that regard was not made out.

Interest

110. The Court of Appeal in the case of the *Attorney General v Fitzroy Brown and others*²¹ set out that the pre-judgment interest rate on general damages should be aligned with the short term rate or the rate of return on short term investments of which there is some evidence before the court. Further, the Court of Appeal in that case reduced the rate of pre-judgment interest rate on general damages from 9% to 2.5%. There being no evidence of the rate of return on short term investments before the court, the court will award 2.5% interest on general damages.

Disposition

111. The order of the court is as follows;

- i. The defendant shall pay to the claimant general damages for wrongful arrest, false imprisonment and malicious prosecution inclusive of aggravated damages in the sum of \$200,000.00 with interest thereon at the rate of 2.5% from the date of institution of the proceedings to the date of judgment.

²¹ CA 251/2012

- ii. The defendant shall pay to the claimant exemplary damages in the sum of \$30,000.00.
- iii. The defendant shall pay to the claimant the prescribed costs of the claim.

Dated the 2nd October, 2018

Ricky Rahim

Judge