THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2016-03548

BETWEEN

TRISHUANA SCARLETT

Claimant

AND

SENIOR SUPERINTENDANT VINCEL EDWARDS

First defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. C. Blaize instructed by Mr. I. Jones for the claimant

Mr. A. Lamont instructed by Ms. K. Redhead for the defendants

Judgment

1. By Claim Form filed on the 19th October, 2016 the claimant seeks damages inclusive of aggravated and/or exemplary damages for false imprisonment, unlawful detention, trespass to property, trespass to person and invasion of privacy. The incident which gave rise to the claimant's claim occurred on the 10th December, 2012. It is her case that at 5:30 a.m. on the said day, the first defendant, accompanied by six other police officers forcefully entered and unlawfully trespassed upon the claimant's property.

2. According to the claimant who was pregnant at the time of this incident, two of the officers entered her bedroom, awoke her from sleep and asked her if she was Trishuana Scarlett. Having confirmed that she was, she was wrongfully arrested and taken to the Fraud Squad at the corner of Richmond and Park Street ("the fraud squad"). The claimant further avers that she was not informed of the reason for arrest.

3. At the station, after approximately four hours she was then informed that she was being detained to aid in the investigation of charges made against her former employer, Christopher Lunn & Co, an Accountancy Firm based in the United Kingdom ("UK"). She was further informed that two British Inland Revenue Officers wanted to interview her about the time she spent at Christopher Lunn & Co. and that the interview was being done pursuant to the Mutual Assistance in Criminal Matters Act Chapter 11:24 with the help of the local police. The claimant claims that she was also informed that if she did not respond to the questions, her detention would have continued.

4. The claimant was detained for approximately thirty-six hours at the fraud squad and was interrogated by the two British Inland Revenue Officers as well as by police officers. After being questioned on the first day, the claimant was detained overnight although the first defendant informed her that she was not being charged but was merely providing assistance by answering the questions put to her by Her Majesties Revenue & Customs. The claimant was released between 5:30 and 6:00 pm on the 11th December, 2012. She claims that she suffered both physical and mental distress.

5. By Defence filed on the 3rd February, 2017 the defendants claim that the claimant voluntarily accompanied the first defendant to the fraud squad to be interviewed. That she also consented to staying at the fraud squad from the 10th to the 11th December, 2012. The defendants' further aver that the claimant was never arrested and/or unlawfully detained. As such, the defendants aver that at all material times their actions were lawful. That when they showed up at the home of the claimant in the early hours of the morning of the 10th December that they were merely there to issue an invitation to the claimant to accompany them to the fraud squad.

Request for assistance

6. Section 7 of the Mutual Assistance in Criminal Matters Act Chapter 11:24 ("the Act") reads as follows;

   "Where there are reasonable grounds to believe that evidence or information relevant to any criminal proceedings may be obtained, if, in a Commonwealth country—
   (a) evidence is taken from any person;
   (b) information is provided;
   (c) judicial records, official records or other records, or documents or other articles are produced or examined;
   (d) samples of any matter or thing are taken, examined or tested;
   (e) any building, place or thing is viewed or photographed,
   a request may be transmitted requesting that assistance be given by that country in so obtaining the evidence or information."

7. It is to be noted that the defendants listed and annexed copies of a request for assistance from the Crown Prosecution Service of the United Kingdom dated the 2nd May 2012 and a Legal Opinion from the Head of the Legal Unit Trinidad and Tobago Police Service to the Assistant Commissioner of Police, Glen Hackett dated the 25th October 2012. These documents were not annexed to the defence filed on the 3rd February 2017 and first appeared on the list of standard disclosure. They next appeared on a list of un-agreed documents filed by the defendants on the 28th July 2017. This court did not make an order

for the filing of a list of un-agreed documents but had in fact ordered a list of agreed documents to be filed and served. Be that as it may, the defendants were not debarred from filing such a list although unnecessary, the documents having been listed on the standard disclosure list and having been omitted from the agreed list of documents. Finally, by supplemental list of disclosure filed on the 13th March 2018, the defendants disclosed or re-disclosed the full text and copy of the request, the earlier copy attached to the first list of disclosure having omitted several pages of the request by inadvertence.

8. Neither of those documents were attached to the witness statement of the First Defendant. But the process of annexing the document to the witness statement is but one method of having a document admitted into evidence. There are several others.

9. The requirements which must be met if a document is to be considered as evidence in a case bears some repeating. A document becomes evidence if it;

    i. forms part of an agreed list of documents or;
    ii. is attached either to the pleading of the party or the list of standard disclosure (usually filed pursuant to an order during case management but prior to the filing of witness statements) and is referred to and sufficiently identified in the witness statement as being so attached (without having to annex a copy thereof to the witness statement),[1] or;
    iii. is attached as an exhibit to the witness statement.

10. It does not become evidence in a case merely because it is listed in a party's list of standard disclosure or in an un-agreed list of documents. The former simply sets out documents that are in the possession of a party and which the party intends to rely on without more. A party may choose not to rely on any of the documents set out in its list of disclosure. Similarly, a party that lists a document on an un-agreed list nevertheless bears the burden of proving the document so long as it is not agreed. This he may do in the manner appearing in the paragraph above.

[1] See CPR 29.5(1)(e)

11. In this case, no attempt to have the documents admitted into evidence as set out above was made by the defence. The record shows this to be so even though the issue was raised by the court before the trial began. Further, no attempt was made at having the witness amplify his statement in order to identify the documents. In fact the witness statement of the first defendant merely sets out that prior to the 10th of December 2012, Trinidad and Tobago received a request for mutual assistance from England in relation to an ongoing English investigation into allegations of fraud against a previous employer of the claimant. He then testified that it was alleged that the claimant whilst in England was involved in the common-law offence of cheating the revenue contrary to the UK Fraud Act of 2005. No date of the request is provided.

12. Glenn Hackett the then Assistant Commissioner of Police ("Commissioner Hackett") of Anti-Crime Operations assigned the first defendant to deal with the request for mutual assistance. Commissioner Hackett also provided the first defendant with a bundle of documents which included an opinion from the police Legal Unit. The opinion detailed how the operation should proceed within the legal framework in place in Trinidad and Tobago.

13. Further, in very general terms, almost the same as set out in the witness statement of the first defendant, the defence filed on the 3rd February 2017 set out that a request was made. No mention was made of the opinion. By reply filed on the 24th April 2017, the claimant set out at paragraph 2 that she puts the defendant to strict proof of the source of his directives and purpose for arresting the claimant.

14. At no time did the first defendant refer to or identify the said documents as being part of either the list of standard disclosure, the supplemental list of disclosure or the un-agreed list of disclosure which is the requirement for admission under the CPR.

15. Under cross-examination of the first defendant, the following evidence emanated;

"Mr. Blaize: In your evidence you indicated that prior to the 10th December, 2012 Trinidad and Tobago received a request for mutual assistance from England, in relation to an ongoing English investigation into allegations of fraud against a previous employer of the claimant, you recall giving that statement in your witness statement at paragraph 3

The first defendant: yes

Mr. Blaize: have you provided to this court anywhere in your witness statement any evidence of any such request of mutual assistance from England

The first defendant: not in the statement

Mr. Blaize: did you not think that would have been important

The first defendant: yes it is important

Mr. Blaize: and you chose not to make it part of the evidence

The first defendant: it is not that I chose not to, remember there is an attorney in this matter, I cannot prepare the statement, it is the attorney, so to say I choose not to is not a fair assessment of the facts"

16. It was therefore abundantly clear to the defence that it was required to prove both the request for mutual assistance and the directives, the former being of utmost relevance and importance to this case. It is relevant and important because the request clearly sets out all of the allegations made against the claimant in her capacity as employee and independent contractor. The request also is pellucid on the issue of the claimant being considered a suspect in the commission of the common law fraud offence. However, for reasons best known to attorney for the defendants (which were never explained to the court), both documents were not put into evidence although the opportunity to so do would presented itself right up to the morning of trial. The court is quite frankly left astounded by the failure of the defence to seek to rely on those documents by their admission in evidence. In the court's view it amounts to a grave error of judgment on the part of those responsible for defending this claim. The circumstance of this omission is even graver when one examines the cross-examination of the first defendant set out above. The witness testifies clearly that he thought that the documents were important but that the matter of whether they were made evidence in the case lay in the hands of the lawyer and was essentially out of his control.

17. Further, attorney for the defendant appeared to have not appreciated the importance of the issue of his reliance on the documents and so completely omitted same from his three-page submissions.

18. Therefore, having regard to the importance of the documents, this court did in fact of its own motion consider whether the documents formed part of the evidence of the defence. In all of the circumstances set out above and in light of the requirement for strict proof, or put another way the requirement for the defence to prove the documents which they could have done in one of several ways and which they failed to do, the court has found that the documents are not evidence in this case and so cannot be used by the defence in support of its case. The burden lies on he who alleges and it is not for the court to infer that the documents disclosed must be the documents referred to by the first defendant in his witness statement and to examine them as though they were evidence. The provisions of the CPR are clear in this regard and the defence has not discharged its burden to prove the documents.

19. It means that had the documents been put into evidence and were properly before this court, the request having specified that the claimant was a suspect and the grounds for so alleging having been set out in great detail in the request, this court would have been entitled to view the documents and consider whether the contents provided a reasonable basis to suspect that the claimant had committed an offence. That of course would have affected the evidence in this case and the consideration by the court of the exercise of the police powers in the context of their use when persons are considered suspects before the courts of this country. It is the purpose and intention of the Act, that in circumstances where the offence for which the person is suspected is a like offence and there is reasonable cause to suspect the commission of the offence, the police may exercise the relevant powers in this territory. In this case, the offence was akin to common law fraud.

20. Whether the conduct of the defence in this case amounted to a dis-service to the Attorney General's Office and by extension the State is not a matter for comment by this court and the court would not wish to unduly criticize counsel who appeared to be very inexperienced

in civil trials and the rules of evidence in civil matters. But that is no reason for the court to bend backwards as it were to attempt to facilitate the defence due to omission of counsel of their choosing. The court must weigh the scales of justice and the chips must fall where they may. Suffice it to say that it is important that the second defendant, being aware of the resources open to it, appoints counsel of requisite experience to defend its cases in court depending on the complexity of the issues in the case. The effect of the omission or failure however, means that the documents not being in evidence, the court therefore ought not to consider them in determining this claim as to do so would be manifestly unfair to the claimant in the circumstances.

Issues

21. The issues to be determined by this court are as follows;
    i. Whether the first defendant trespassed onto the claimant's property;
    ii. Whether there was trespass to the claimant's person;
    iii. Was the claimant arrested and if so whether the arrest of the claimant was lawful;
    iv. Whether the claimant was unlawfully detained and/or falsely imprisoned from the 10th to the 11th December, 2012 and
    v. If the defendants are found liable for any of the above, whether the claimant is entitled to damages, including aggravated and exemplary damages.

The case for the claimant

22. The claimant gave evidence and called three other witness, her husband, Farai Hove Masaisai, her brother-in-law, Tafara Hove Masaisai and her mother-in-law, June Thomas.

23. The claimant is an Immigration Consultant and Office Manager at Hove & Associates. She is thirty-three years of age and was born in Kingston, Jamaica. At the age of fifteen, she migrated to the UK. In August, 2010, she migrated to Trinidad and Tobago to live with her husband, Farai Hove Masaisai ("Farai"). At all material times, she resided at No. 38 Jerningham Avenue Belmont and was a Contract Administrator at the National Information

& Communication Technology Company of Trinidad and Tobago ("iGovTT"). She also operated as a freelance Business Consultant.

24. On the 10th December, 2012 at about 5:30 am ("the said date") the first defendant accompanied by six other police officers forcefully entered the claimant's residence without her permissions and/or consent. The claimant testified that the officers who were all dressed in black, plain clothing did not have a warrant from the court to enter her property. This is not in issue. Further, having not been awake at the time of entry, the claimant could give no direct evidence of the facts surrounding the entry of the officers. That evidence emanates from the testimony of other witnesses for the claimant.

25. Two female officers who were out of uniform entered the claimant's bedroom whilst she was asleep and woke her up. The claimant testified that she jumped out of her sleep, thinking she was dreaming. She was then asked if she was Trishuana Scarlett to which she responded yes. Thereafter, the officers instructed her to get out of bed and to accompany them. After she realized that the officers were there to arrest her, the claimant asked the officers if she could use the toilet and change out of her pajamas. She proceeded to the bathroom and attempted to shut the door. However, one of the officers informed her that she could not close the door and so she had to use the washroom in front of the two female officers. The claimant testified that her right to privacy was violated and she felt striped of all her dignity.

26. During the entire ordeal, the claimant protested her innocence to no avail. She then begged the officers to allow her to change her clothes. They allowed her to do so but she was again denied her privacy as she had to change in their presence. Thereafter, the female officers proceeded to arrest the claimant. The claimant testified that the officers did not inform her of the reason for her arrest.

27. When she was taken out of her bedroom, she saw Farai and her brother-in-law Tafara Hove Masaisai ("Tafara"). The claimant testified that she was embarrassed, ashamed and very frightened as she had only recently relocated from England to Trinidad and furthermore she was pregnant at the time.

28. Tafara who was employed as a state attorney in the office of the Director of Public Prosecutions ("the DPP"), asked the first defendant why the claimant was being arrested and if there was any warrant for her arrest. The first defendant ignored Tafara's questions. As she was leaving the property, the claimant heard Farai, Tafara and her sister-in-law, Thandiwe Hove Masaisai ("Thandiwe") asking questions. She testified that she never heard them verbally abuse any of the officers. She further testified that the entire ordeal was stressful and that she felt as though she had no rights in her new home. During cross-examination, the claimant testified that she had no conversations with Thandiwe on the said date during the time the officers were at her home.

29. The claimant was escorted out of her house by the two female officers, one holding either side of her hands and was then placed in the police vehicle. She testified that she was forced to go to the fraud squad. At the fraud squad she was taken to the basement of the building. She testified that it was only upon arriving at the fraud squad, she was told the first defendant's name.

30. The claimant was placed in a room similar to that of a training room with tables and chairs. She was in this room for approximately five hours. The door of the room remained open but it was guarded by a female officer. Approximately one hour after she was detained, she was informed that she was arrested and being detained to be questioned about her former employer, Christopher Lunn & Co. and for defrauding Her Majesty's Revenue and Customs of over nine hundred million pounds. The claimant testified that this allegation against her character was completely false and disparaging. According to the claimant, the circumstances were very hostile and intimidating. She testified that the officers kept referring to her as the prisoner and that they kept mumbling comments to each other about her.

31. On one occasion, when one of the female officers referred to her as a prisoner, the claimant asked her why she was calling her a prisoner. The officer then apologized to the claimant and told her that she knew her mother-in-Law, June Thomas ("June"). That as a child, she (the officer) stayed by June during the summer time. The claimant testified that as she was

listening to the officer speak about her relationship with June, she thought to herself that Trinidad and Tobago is such a small island and so she was hoping and praying that this untrue and terrible experience she was going through would not make the national newspaper.

32. About four hours thereafter, the claimant was told that she was really being detained to aid in the investigation of charges made against her former employer, Christopher Lunn & Co. She testified that this was totally different to what the officers had told her previously which was that charges were laid against her.

33. The claimant worked for Christopher Lunn & Co. for a little over two years. She testified that as she was totally confused as to what was happening, she refused to answer any questions until it was clear whether or not she was being charged or simply assisting the investigations of charges made against Christopher Lunn & Co. The claimant also demanded to speak to her attorney.

34. The claimant testified that she was informed that she was only detained at the fraud squad because at the time the officers visited her home, her relatives had asked one too many questions. That if her relatives had not asked any questions, the first defendant would have only notified her of an appointment time to visit the fraud squad on her own that morning. The claimant testified that she could not believe what she was being told.

35. The claimant was also informed that two British Inland Revenue Officers wanted to interview her about her time working at Christopher Lunn & Co. She testified that she was told that if she failed to respond to the questions, she would have been further detained until she decided to cooperate. The claimant demanded to speak to her attorney again and was allowed to do so on this occasion. She was allowed to see Farai and her attorney, Mr. Eduardo Martinez at different intervals throughout her time at the fraud squad.

36. The claimant testified that she agreed to answer the questions because she was indirectly forced to do so as failure to answer the questions would have meant that her detention would have continued. According to the claimant, as the questions were so many, all could not have been asked in one day. Consequently, after being questioned on the first day, she

was detained overnight. The claimant asked why she was being detained since she was not being charged and was willfully answering investigation questions put to her by the British officials. She was simply told by the officers that she was being detained and that she could not leave until all the questions were answered. The claimant testified that given her prenatal state, she would have definitely gone home had she been granted the opportunity.

37. At about 6:00 pm on the said date, she was given a metal chair situated in a small office wherein other officers were doing work. She was made to sleep in a sitting position for about six hours as she was not allowed to rest her head on a table. During cross-examination, the claimant testified that she could not recall whether there was padding on the metal chair. Throughout the night, she was guarded by a police officer. Whilst on the chair, she started experiencing abdominal pain and discomfort. She told the female officer who was guarding her that she was a few weeks pregnant and was experiencing severe pain. It was only at this time the officer took her to the police quarters and gave her a bunk bed to sleep on for the remainder of the night.

38. The claimant testified that during the said date, she was not given any meals or anything to drink by any member of the fraud squad. The only meals she had were those that were provided by Farai and June. She was also not allowed to take shower or the opportunity to change her clothes.

39. The following morning (the 11th December, 2012), the claimant was interviewed for about two hours by the TTPS before Her Majesty's Revenue and Custom officials reconvened. For approximately eight hours, she was questioned non-stop. She testified that due to the early stage of her pregnancy, she was experiencing a lot of back and pelvic pains and that the fact that she had to sit for such a long time added to her pains. She became depressed and stressed. The claimant was allowed to leave the fraud squad at about 5:30 pm on the 11th December, 2012.

40. During cross-examination, the claimant was referred to the notes from her interview. She testified that she was not privy to this document but that the questions contained therein

looked familiar to those that were asked during the interview. At page 13, the claimant was asked as follows;

"Ques. 111 Your profile on Linkedin states that you have led and managed the biggest financial company in Sussex, specializing in Tax investigations, book keeping vat and tax returns. Was what you stated on your profile on the internet true?"

41. According to the notes, the claimant's response was as follows;

"No. I beefed up my profile on Linkedin in order for me to get employment in Trinidad. Some of the things on my profile are not exactly the whole truth. But I can do some of the things."

42. During cross-examination, the claimant testified that she could not recall the questions and her answers with specificity but that she would have answered this question by stating that there is a possibility that most persons would have exaggerated their LinkedIn profile to get employment. The claimant was then asked if she was *"beefing up"* her case to get damages to which she responded no.

43. On the 13th December, 2012 the Newsday newspaper published an article which contained the following;

"England's famed Scotland Yard detectives are currently in Trinidad on the trail of a Belmont woman whom the sleuths believe is at the center of a scam in which unsuspecting persons were fleeced of over £900 million…on Sunday, a 35-year old woman was taken to Port-of-Spain office of the Fraud Squad where both local and Scotland Yard detectives questioned her for several hours over the course of two days…It is believed that while living in England for ten years, the woman was the lead person behind a number of "paper" companies which scammed persons of hundreds of millions of dollars… the woman returned to Trinidad last year and began living in Belmont with her husband who is a lawyer…".

44. The claimant testified that the article caused her and her family grave embarrassment and odium. She further testified that article also damaged her freelance business.

45. According to the claimant the very next day was the IGovTT's Christmas party. At the party, a few of her work colleagues approached her and jokingly asked if she was the person being referred to in the newspaper article. The claimant facetiously shoved off the question but ever since that day, a few of her colleagues at work never spoke to her the same way again.

46. The claimant testified that Farai, his siblings and his mother, June who are all well-known were also embarrassed. She further testified that she and her family are all law abiding citizens and would have happily assisted the police with their investigation if they were asked in a humane manner.

47. The claimant testified that she is aware that the other persons who worked for Christopher Lunn & Co. were asked for interviews but they were never arrested and/or detained.

48. Finally, it is not in issues that the claimant eventually gave evidence for the crown against Christopher Lunn. There is no evidence before this court as to the grant of any immunity from prosecution for so doing. Should this have been the case, it would have been open to this court to find that the claimant may have been complicit and therefore a suspect or co-accused at some point but in the absence thereof this would be pure speculation.

49. **Farai** is an attorney-at-law at Hove & Associates. He was admitted to the bar in 2010. The property at which Farai and the claimant resided at the material time was made up of about five apartments. Most of the evidence of the entry upon the premises comes from him and his brother. During cross-examination, Farai testified that the building is fenced and that there is only one entrance to the building which is the front gate. That the gate was unlocked on the said date. Further during cross-examination, Farai testified that the ground floor of the building consisted of three apartments and the upper floor consisted of two apartments. He and the claimant lived in the front downstairs apartment. Tafara, Thandiwe and June resided in the apartments located on the upper floor.

50. Farai's apartment contained two bedrooms, a kitchen, a living room and a toilet and bath. Further, the apartment is an open plan apartment so that the living area flows into the kitchen area. According to Farai, on the said date he was awaken at about 5:30 am by the barking of his dogs. During cross-examination, he testified that at the time he had one house dog and about two or three dogs in the yard. When he looked through the curtains, he saw men dressed in black armed with guns. During cross-examination, Farai testified that there is only one entrance to their apartment which was a glass door. That he saw the officers through the glass door. The first defendant stated that he was a police officer and so Farai cracked open the door slightly to ask him to see his identification. However, the first defendant shoved the door open and pushed him aside.

51. He testified that at that time his other family members came outside as the dogs continued to bark. The officers then asked him for the claimant and he told them that she was asleep. Two of the officers proceeded to the bedroom and the other officers kept Tafara and him in the kitchen. He further testified that he saw the officers bundle the claimant out of their apartment and into an unmarked vehicle. He was frightened, nervous and stressed. One of the officers who was a part of the raid told Farai that they were taking the claimant to the fraud squad as she had stolen millions of dollars.

52. Farai testified that he could not believe what the officer had said about the claimant as he knew the claimant since he was a student in London, they were both students together and at that time in 2012 they owned very little. Further, he knew the claimant was neither a thief nor a fraudster. According to Farai, the entire ordeal was very embarrassing as he had to explain to his family that the police had gotten it very wrong and that the claimant was no thief.

53. Farai testified that as he, his brother, Tafara and his sister, Thandiwe are all attorneys-at-law, they were well aware of what the law is and the procedure to be followed by the officers when making an arrest. He further testified that the officers were very disrespectful and that they treated his family and him as though they were common criminals.

54. It is his evidence that he never verbally abused any of the officers. That he is a member of the Law Association of Trinidad and Tobago and so he is an officer of the court who is bound to respect and uphold the law.

55. He arrived at the fraud squad at approximately 6:20 am. After some time had passed, he was allowed to see the claimant who was sitting on a chair in an enclosed room which was guarded by an officer. He testified that the claimant looked absolutely terrified. That he had never seen her like that in his life. He told her not to worry and began to comfort her. He also got something for her to eat and contacted Mr. Martinez to assist with the situation.

56. Prior to Mr. Martinez's arrival, Mr. Ancil Moses another attorney-at-law visited the fraud squad to assist in finding out what was happening. Mr. Moses attempts were however futile. Mr. Martinez arrived thereafter.

57. At around 12:00 pm, Farai was informed at the station that the claimant was being detained to aid in the investigation of charges made against her former employer, Christopher Lunn & Co. He was totally relieved as he was previously told that the claimant had stolen millions of pounds. He was however also upset about the manner in which the claimant was arrested, the fact that she was still being detained and the fact that she was being referred to as the prisoner. Farai testified that what was especially troubling to him was the impact all of the trauma may have had on his unborn child.

58. According to Farai, although the interview lasted for about three hours, it was very intense as it was question after question without any breaks. He testified that the claimant was questioned by the local police who were being directed by two British Inland Revenue Officers. Both Mr. Martinez and Farai were with the claimant during the interview supporting her and supervising the questions posed to her.

59. After being questioned on the first day, he was of the view that the claimant would have been allowed to leave the fraud squad. That she was not so allowed and was detained overnight. He testified on cross-examination that he asked the officers who were questioning the claimant for the claimant to leave after the first day of questioning came to an end but that she was not allowed to do so. The next morning, he awoke early and visited

the office of the Ministry of National Security in Temple Court which was near to his law office. At about 6:00 am he saw and spoke to the then Minister of National Security, Mr. Jack Warner. In the presence of a Deputy Commissioner of Police, Mr. Warner appeared to listen to Farai's complaint. Thereafter, Mr. Warner asked the Deputy Commissioner of Police to provide a report to him on the reason for the detention of the claimant.

60. Farai returned to his law office and began to draft a writ of habeas corpus. He also wrote a letter to the Police Complaints Authority to inform same about the manner in which the officers conducted themselves at his property.[2] This letter provided as follows;

"…At about 5:15 am this morning I was awaken at my private residence by my dogs barking, behind the wall were persons dressed in black who stated that they were police officers. I requested to see their badges, only one officer by the name of superintendent Edwards quickly flipped his badge at me. He then came into my yard without invitation or warrant followed by six other individuals dressed in black one of them had a gun in his waist with no holster. To say the least I was intimidated and greatly embarrassed as neighbours had begun to look through their windows at my property.

The seven individuals dressed in black then came to my door and asked for my wife Trishauna Scarlett Masaisai, I told them that she was asleep in our bedroom, they asked to come in and I in turn asked what for. They did not reply and they barged right into my living room, at this stage my dogs were going hysterical and I had to put them away as I feared that they may shoot my dogs.

They then went into my bedroom where my wife was sleeping undressed and arrested her without even telling her or myself what she was being taken, detained, charged and/or arrested for. Because of all the noise that they created by trespassing on my property, my brother …came out to witness the manner in which seven unidentified police officers were allegedly carrying out their duties.

The only thing I was told upon my wife being arrested is that she was being taken to the Fraud squad for questioning… I arrived at the Fraud squad building with Mr. Moses… I was told that she was being held for questioning and that an interview would take place at

[2] A copy of this letter was annexed to Farai's witness statement at "F.H.M.1".

about 11am. I asked them if she could leave to change her clothes and bath as it is currently that time of the month for my wife and she is still in her night gown, they said she cannot leave the station…"

61. According to Farai, the second day of questioning was worse than the first day. He testified that the questioning lasted for approximately eight hours. That it was torturous and quite inhumane to put a pregnant woman through such an ordeal.

62. Farai testified that although no name was mentioned in the newspaper article, they live in a small community in Belmont and so almost everyone in the community knew that the police officers went to their home on the said date and took the claimant. As such, it was the testimony of Farai that even though names were not mentioned in the article, it was clear to those who live in the community of Belmont to whom the article was directed.

63. Farai testified that the following week, he had to explain the scenario to Mr. Fitzgerald Hinds, his then Member of Parliament as he had read the article and recognized the British woman to be the claimant. According to Farai, it was very embarrassing to have to explain the scenario to Mr. Hinds.

64. **Tafara** testified that on the said date, he heard persons running in the yard. A little while thereafter he heard Farai speaking with someone. He further heard Farai call out to him to come downstairs. When Tafara arrived downstairs, he saw six officers in his yard with guns and the first defendant at the front door. During cross-examination, Tafara testified that his apartment is located at the back of the building on the upper floor and that as he made his way to Farai's apartment, he saw the three officers outside and two female officers at the entrance of Farai's apartment. He further testified during cross-examination that when he saw the officers, they were proceeding into the kitchen/dining room area of the apartment and he followed them into the apartment. He asked to speak to the officer in charge and proceeded to identify himself by stating that he was a State attorney with the hope of getting some sort of mutual respect as he worked alongside several police officers.

65. According to Tafara, the officer in charge identified himself to him and he asked him if he had a warrant. Tafara testified that the officer did not respond. He then asked the officer if

he can show him the warrant and again the officer did not reply. At this time, Thandiwe came outside and asked what was going on. He told her that he did not know because the officers were not communicating with him.

66. When he noticed that he was being ignored, he with the support of Thandiwe began informing the officers of the laws of Trinidad and Tobago in relation to trespass to land and wrongful arrest. However, their efforts went in vain as the officers continued to ignore them.

67. According to Tafara, he and Farai waited in the kitchen while the two female officers without permission went into the claimant's bedroom. After some time had passed, the claimant was escorted out of her bedroom by the two female officers. Tafara testified that one of the officers held the claimant's right hand and the other held her left hand. Further, he testified that one officer led the way while the other was in the back and that Farai was walking and speaking alongside the officer in the front. During cross-examination Tafara testified that he did not see when the female officers entered the claimant's bedroom. That he heard female voices in the bedroom and saw them when they were existing the bedroom.

68. Tafara testified that at no point in time were they shown any identification cards or informed of the reason of the claimant's arrest. That he was only sure it was police officers when he saw them jump into the police vehicles and sped off with the claimant. He further testified that the officers did not read any of the Judges Rules to the claimant when they were escorting her off of the property. That he knew that the procedural rules must be read. By this the court understands the witness to be saying that none of the cautions were given to the claimant.

69. **June** is a retired teacher. She testified that on the said date she heard persons running in her yard and then heard Farai speaking with someone. When she looked outside she saw men with guns in her yard. She immediately proceeded to go outside but when she reached the claimant's living room, two men with guns told her not to move. During cross-examination, June testified that there are two doors to the claimant's apartment. That she was trying to enter the claimant's apartment via the back door. She further testified during

cross-examination that as she opened the door and attempted to enter the apartment, the officers told her to stop. She then saw her son Tafara and her daughter Thandiwe outside speaking with one of the officers. During cross-examination, she testified that where she was standing she had a view of both inside the apartment and outside.

70. June testified that shortly thereafter she saw two officers escorting the claimant. She further saw that Farai was attempting to get information from the officers but they were ignoring him and proceeded to arrest the claimant.

71. According to June, they did not know the purpose for the claimant's arrest. She testified that Farai quickly proceeded to the fraud squad to enquire. About an hour after, Farai returned and informed her that he had seen the claimant briefly and that she looked like she was under a lot of pressure and quite fearful. She testified that Farai did not remain at home for a long period. That he basically just picked up something for the claimant to eat and returned to the fraud squad to find out what was happening.

72. June took it upon herself to prepare lunch and pack a bag of the claimant's things in case she was being detained. In the bag there was clothes, toothpaste, a tooth brush, deodorant, skin lotion, a comb, a brush, hair spray and a body mist. When she finished preparing lunch, she packed a bowl for the claimant and went to deliver the food and the bag. When she arrived at the fraud squad, she informed the officers that she would like to drop off some food and some clothing for the claimant. She testified that the officers knew exactly who she was referring to and informed her that they would not be able to accept the food and clothing.

73. She waited until she saw Farai and told him that they refused to take the food and clothing. Farai took the food from her and pleaded with the officers to give it to the claimant. Subsequently, June left the fraud squad and returned home. Later that night, she noticed that the officers kept the claimant overnight. She again took it upon herself to prepare meals for the claimant for the next day. However, she gave it to Farai to deliver it to the claimant.

Case for the defendants

74. The defendants called one witness, the first defendant. According to the first defendant, prior to the said date Trinidad and Tobago received a request for mutual assistance from the UK in relation to an ongoing English investigation into allegations of fraud against the former employer of the claimant, Christopher Lunn & Co. He testified that it was alleged that the claimant whilst in England was involved in the common-law offence of cheating the revenue contrary to the UK Fraud Act of 2005.

75. Glenn Hackett the then Assistant Commissioner of Police ("Commissioner Hackett") of Anti-Crime Operations assigned the first defendant to deal with the request for mutual assistance. Commissioner Hackett also provided the first defendant with a bundle of documents which included an opinion from the police Legal Unit. The opinion detailed how the operation should proceed within the legal framework in place in Trinidad and Tobago.

76. Upon receipt of the opinion, the first defendant caused a search to begin for the whereabouts and address of the claimant. That search was not successful until the evening of the 9th October, 2012 after the police employed both traditional and electronic methods.

77. Prior to the said date the first defendant told his party of officers that they were going to invite the claimant to an interview which was supposed to take place later that on the said date. The first defendant further informed his party of officers that the claimant had to be interviewed as she was a suspect and that as there was no information of any offence committed by her within the jurisdiction of Trinidad and Tobago, she was not to be arrested. The first defendant testified that he also advised his officers to use maximum caution, self-restraint and to attempt to not cause any undue emotional distress.

78. Having fully briefed his party of officers, on the said date the first defendant and a number of other officers including one Sergeant Cudjoe (who was not called by the defendants to give evidence) proceeded to the claimant's place of residence. Some of the officers were armed and some were not. He was not armed. The first defendant testified that they were

comparatively early in the morning as they did not know what time the claimant would have been leaving for work. He further testified that they did not have any warrant of arrest or any intention of arresting the claimant. That they simply intended on informing her of the time and place of the interview planned for later that day.

79. The first defendant testified that as he was the highest ranking officer within the party that visited the claimant's residence on the said date, he was the decision maker. He further testified that their main intention had been to inform the claimant of the time and place of the interview and leave.

80. According to the first defendant, sometime after 5:00 am on the said date, the party of officers entered the claimant's yard. The first defendant could not recall whether or not the gate to the residence was open before any of the officers entered but he confirmed that there was no use of force or breaking of locks involved in gaining access to the claimant's yard. The officers did not have any equipment for the purpose of breaking locks with them.

81. The first defendant testified that dogs barked at them when they entered the yard but that the dogs did not attack them. He further testified that he did not see any dogs in the claimant's yard so that the barking may have come from elsewhere. A man came to the door and the officers introduced themselves by producing their identification cards. Thereafter the officers asked to speak with the claimant. The man then introduced himself as the husband of claimant (Farai) and asked what the officers' visit was about. The first defendant informed Farai that they had come to speak with the claimant and that whilst speaking to her, he (Farai) could be present and listen on. Farai then left and returned with the claimant. As such, it was the first defendant's testimony that officers did not go into the claimant's bedroom and awaken her.

82. The first defendant repeated their introductions and began to inform the claimant about the situation. He explained to the claimant that they would like to interview her in relation to the allegations made against her by Her Majesty's Revenue and Customs. He also gave her the location of the fraud squad. The first defendant testified that whilst trying to

communicate with the claimant, Farai in an insulting fashion, interrupted loudly. Farai's interruption was without the use of obscene language.

83. While Farai was speaking in a loud voice, Tafara came to the door. The first defendant testified that Tafara stated that he was working for the DPP. He further testified that instead of helping to bring the situation under control, Tafara joined his brother in loudly disparaging the officers. According to the first defendant, Tafara did not ask why the claimant was being arrested as the claimant was not being arrested. That Tafara insulted the intelligence of the officers and compared them to animals.

84. The first defendant testified that as they were there to request an interview and did not wish to cause any emotional distress, they used maximum tolerance towards the behaviour of Farai and Tafara. As such, the officers made no move to arrest them or act in any forceful manner towards them.

85. According to the first defendant, the claimant's sister-in-law, Thandiwe eventually came onto the scene and she was very accommodating towards the officers. Thandiwe calmed her brothers to an extent and advised co-operation with the officers. As she did not claim her brothers entirely, the first defendant still had difficulties in fully advising the claimant of the situation without interjections.

86. Also, the first defendant was of the view that Farai and Tafara was attempting to prevent or strongly discourage the claimant from attending the interview. In light of his observations and the fact that they wanted to interview the claimant, he asked the claimant to accompany them to fraud squad instead of finding her way to the fraud squad's office later that day. As such, it was the testimony of the first defendant that the claimant was invited to accompany them to the fraud squad because of the actions of Farai and Tafara. He testified that he is not aware whether the claimant was told the aforementioned.

87. According to the first defendant, the claimant agreed to accompany them to the fraud squad after she changed her clothes. He testified that one or two female officers accompanied the claimant when she went to change her clothes. He further testified that the female officers did not force their way into the claimant's bedroom. Having changed her clothing, the

claimant left and proceeded to the fraud squad with the officers. As such, it was the testimony of the first defendant that the claimant was not arrested, or shoved and that while she asked and was allowed to change her clothes, she did not have to beg.

88. Shortly after arriving at the fraud squad, the first defendant spoke with the claimant in the presence of Sgt. Cudjoe and others. He testified that at the fraud squad, he was able to inform her fully of the situation. He informed her that they had a request from the British authorities to interview her in relation to allegations of cheating the revenue when she was employed with Christopher Lunn & Co. He further informed her that the interview would take place at approximately 8:00 am. That it would be led Sgt. Cudjoe in the presence of other persons including two British law-enforcement persons. Moreover, he informed her of her rights and that she could have an attorney present. The first defendant testified that the claimant agreed to have an attorney present.

89. The first defendant was not involved directly in the interview of the claimant. He testified that the diary extracts disclosed in this matter are true and correct.[3] He testified that he never told or gave the claimant the impression that she was at risk of being arrested and charged in Trinidad for any offence committed in the Trinidad and Tobago jurisdiction.

90. Having briefed the claimant, the first defendant left her in the company of Sgt. Cudjoe and other police officers. Sometime during the morning, Farai visited the fraud squad and asked to speak to the first defendant. The first defendant explained to Farai the reason the officers had visited his premises and why they wanted to interview the claimant. Farai asked the first defendant if he could be present during the interview. The first defendant told him that he could. The first defendant also met with Mr. Martinez and explained the situation to him.

91. The first defendant testified that neither did he inform the claimant that she could not leave the fraud squad nor did the claimant tell him that she wanted to leave. He further testified that the claimant was not a detainee or a prisoner. Prisoners are not kept overnight at the fraud squad. They are placed in a police station with an available cell. According to the

[3] Copies of the station diary extracts were annexed to the first defendant's witness statement at "V.E.1".

first defendant, the arrangement was that after the first day, the interview would re-commence early the following morning. He asked Ms. Cudjoe to make arrangements for a female officer to be present at the fraud squad for the night as civilians are not left alone in the fraud squad. The first defendant testified that he believed that Ms. Cudjoe made those arrangements and took steps to see to the claimant's comfort.

92. The first defendant does not recall having any interactions with persons in relation to this matter on the 11th December, 2012 (the second day of the interview). He may or may not have met with Farai again.

93. According to the first defendant, the claimant may have spent approximately thirty-six hours at the fraud squad. He reiterated that she was not detained. That she stayed overnight but that she did not ask to leave. He testified that it was not standard for bunk beds to be in the female dormitory. That it would have been a standard bed. He further testified that he was informed that the claimant was offered meals and refreshment opportunities and that at least some of the meals she ate were brought by her relatives. He was not directly involved in offering the claimant meals and refreshment opportunities.

94. The first defendant testified that he did not give any information to the media. That he reported to Commissioner Hackett and communicated with Mr. Kowlessar, the Head of the Central Authority.

95. He testified that he is not aware of all the reasons why a person's name might appear on the Detainee Register despite that person not being a detainee. He further testified that he is aware that there is an index organized by the first letter of a person's name at the back of the register and that it could be helpful to enter interviewed persons into that register for record purposes. However, the claimant's name and address were entered in the register of detainees for the 10th and 11th December, 2012.

The cross-examination of the first defendant

96. During cross-examination, the first defendant testified that the claimant's consent was required for the interview. He also testified that when he decided to go to the claimant's residence, it was his intention to inform the claimant of the request to interview her, the time of the interview and to ask her to come to the fraud squad. That he had no intention of asking her to leave immediately.

97. During cross-examination, the first defendant testified that neither did he think the claimant was a dangerous person nor did he think that in going to advise her about the interview, his life would have been in danger. He testified that although he did not think he was in danger, he went to the claimant's residence with a number of officers because he did not know the area and he would not have taken the chance of going alone. When asked if it was the normal procedure to go with a party of officers to advise someone of an interview, the first defendant testified that he was not certain whether there was a protocol but that it was how he dealt with the situation.

98. The first defendant testified that he could not have called the claimant to inform her of the interview because he did not know her phone number. He further testified that it may have been prudent to get her phone number.

99. According to the first defendant, when he and the officers arrived at the claimant's residence on the said date, Farai walked to the fence of the property and spoke with them. The first defendant testified that he showed Farai his identification card and that Farai invited the officers to enter his premises. He further testified that after indicating that the claimant was asleep, Farai went to get her. It was the testimony of the first defendant that he could not finish his conversation with the claimant because Farai and Tafara were very abusive towards the officers. He also testified that at no point in time Farai told him that he and the officers were not supposed to be on their property. That he did not recognize a sense of objection but more a sense of insult.

100. The first defendant testified that the female officers accompanied the claimant when she went to change her clothing to ensure that the claimant did not have anything dangerous on her person.

101. It was the testimony of the first defendant that at any point in time the claimant wanted to leave the fraud squad, she could have left. He testified that the claimant did not indicate that she wanted to leave and that he did not tell her that she could not leave. He further testified that at the fraud squad the claimant was offered the opportunity to take a shower but that she refused to do so.

102. During cross-examination, the first defendant testified that he knew nothing about the article that was published. He further testified that he was unaware as to how the newspaper got the information which was published.

Issue 1 - *whether the first defendant trespassed onto the claimant's property;*

Law

103. A person's unlawful presence on land in the possession of another is a trespass for which a claim may be brought, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it. He also commits a trespass to land if, having entered lawfully, he unlawfully remains after his authority to be there expires.[4]

The submissions of the claimant

104. The claimant submitted that it is undisputed that the first defendant and a party of officers entered her property. The claimant argued that there in the circumstances of this case, there was no situation to justify the officers entering her property without a warrant. That the first defendant's evidence that Farai invited the officers into their home was categorically denied.

[4] Halsbury's Laws of England Volume 97 (2015), para 563

105. According to the claimant, if the court accepts the first defendant's position that is he entered their property with permission, that permission which was allegedly granted was revoked when Farai and Tafara demanded to see a warrant for the officer's presence.

106. The claimant submitted that the only justification raised by the defendants throughout their entire case was that they had to inform the claimant of the date and time of the interview. As such, the claimant submitted that the defendants failed to prove any justifiable reason for their intrusion into her home. The defendants made no submissions on this point.

Findings

107. The resolution of this issue is dependent on the testimony of Farai, Tafara and Edwards. It is the evidence of Farai that he was awaken by the barking of the dogs, that he pulled the curtains of the front glass sliding door saw the first defendant who then said he was a police. Farai then cracked the front door (opened it slightly) to ask for identification, the first defendant showed it to him briefly and then entered having pushed open the door. Farai testified that he had one house dog and two others in the yard. He did not state whether they were loose or tied. However, it is to be noted that in his complaint to the PCA he stated that his dogs were hysterical. Under cross-examination he admitted that he may have been speaking of the house dog that was inside the apartment. He also testified that the front gate was not locked. The first defendant said that he could not remember if the front gate was unlocked. That they did not break any lock but simply entered the yard. As a matter of common sense this must mean that the gate was not locked. He admits hearing the barking dogs but claimed that the noise may have come from elsewhere as he saw no dogs. All the evidence therefore leads the court to believe that the dogs (the ones outside) were in fact tied and the court so finds. Farai came to the door and the officers introduced themselves by producing their identification cards. Thereafter the officers asked to speak with the claimant. Farai asked what the officers' visit was about. The first defendant informed Farai that they had come to speak with the claimant and that whilst speaking to her, he (Farai) could be present and listen on. Farai then left and returned with the claimant.

108. At no time did the first defendant provide details of his entry into the apartment save and except to say that he was invited in. In fact his version in his evidence in chief is diametrically opposed to the version given by Farai. On his version, the inference is that he stood at the doorway and Farai fetched the claimant and brought her to them. When then and in what circumstances did the police enter the apartment remains unanswered on the evidence for the defence. However, when cross-examined the first defendant provides a different version of the events that he gave in chief. In that version when he and the officers arrived at the claimant's residence on the said date, Farai walked to the **fence** of the property and spoke with them. The first defendant testified that he showed Farai his identification card and that Farai invited the officers to enter his premises. He further testified that after indicating that the claimant was asleep, Farai went to get her.

109. The evidence must make sense to the court. It must be plausible. Firstly, despite the evidence of the first defendant the court notes that it was never put to Farai that he proceeded outside the apartment and went to the fence to speak to the officers and then invited them inside the premises. This is materially different from that which Farai was alleging and therefore it ought to have been put to him to give him the opportunity to answer.

110. Further, the court does not find it plausible that Farai would have gone outside to the fence having regard to the fact that at the time he was awaken, he would have been unaware that the people with guns at the front were in fact police until he was so informed. It is his evidence that he was so informed by the first defendant when he peeped through the curtain at the front door and was told so by him while he was standing at the front door. This is very plausible in the court's view, seeing that the gate was unlocked.

111. The evidence of Tafara is that upon hearing the noises he was called by Farai and observed the officers standing in the yard with guns and the first defendant at the doorway. It is also his evidence that at this point he attempted to speak with the first defendant but was ignored. During cross-examination, this witness gave evidence as to the circumstances of his entry into the apartment. He testified that his apartment is located at the back of the building on the upper floor and that as he made his way to Farai's apartment, he saw the

three officers outside and two female officers at the entrance of Farai's apartment. He further testified during cross-examination that when he saw the officers, they were proceeding into the kitchen/dining room area of the apartment and he followed them into the apartment.

112. The court finds that his evidence appears to support the evidence of Farai that the first defendant stood at the doorway speaking to him before entering the apartment. The evidence in totality therefore supports the version given on the claimant's case, that Farai spoke to the first defendant at the door and not at the fence. It follows that it is plausible having regard to the supporting evidence and the paucity of evidence from the defence that after speaking with Farai the first defendant further slid open the door and entered. To this end the entry was unlawful and remained unlawful throughout and the court so finds.

113. The court also notes that it is accepted on both sides that the first defendant did not have a warrant either to enter the premises or to arrest the claimant in which case they may have lawfully entered for either purpose.

Issues 2 & 3 – *was the claimant arrested and if so whether the arrest of the claimant was lawful*

Law

114. To arrest a person is to restrict his freedom under lawful authority. It usually involves the taking hold of a person, through touching, no matter how slight is sufficient. Words alone may also amount to an arrest if the form of words used is calculated in the circumstances of the case to bring to a person's notice that he is under compulsion, and does bring it to his notice and he then submits to the compulsion.[5] For an arrest to be lawful the person being arrested must be informed of the fact that he is under arrest and the reasons for that arrest albeit not at the same time if not practicable.[6]

[5] See Alderson v Booth (1969) 2 Q.B. 216

[6] Jason Khan & Keron Williams v The Attorney General of Trinidad and Tobago, CV2014-01187 para 15

115. The essence 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.[7]

The submissions of the defendants

116. According to the defendants, the liberty of the claimant was never removed. The defendants submitted that the claimant was not detained on the 10th or 11th December 2012. That the first defendant's evidence of same during cross-examination was unshaken. As such, the defendants submitted that no damages are due as a result of the events comprising and surrounding the claimant's interview process.

117. The defendants further submitted that proceeding with armed officers when one is going to speak with a person who is unlikely to cause harm is not inconsistent where the safety of oneself and one's officers is involved. According to the defendants, it makes sense to prepare for any eventuality including the eventuality of attacks from the people who are in no way related to the person who is to be interviewed.

118. The first defendant submitted that with respect to the evidence given by the claimant and on her behalf, the following observations were made;

i. The claimant was willing to exaggerate her claim or to gild the truth. Evidence of this is the fact that she did not deny during cross-examination that she sought to make her LinkedIn resume appear more "shiny" than it ought to have appeared, as indicated at the bottom of the thirteenth sheet of the interview notes.
ii. References to the claimant as a prisoner were denied by the defendants;
iii. The evidence of Tafara and June cannot be used to support the claimant's narrative that Farai did not bring her to the door as they both confirmed during cross-

[7] Halsbury's Laws of England Tort, Volume 97 (2010) 5th Edition para 542.

examination that they did not see who went into the claimant's bedroom. That they only saw when the clamant existed the bedroom with the officers.

iv. The evidence of Farai in the letter he wrote to the Police Complaints Authority made it clear that embarrassment was one of the motivating factors behind his actions. Farai's evidence in this regard was consistent with the first defendant's evidence that he recognized a sense of insult not a sense of objection.

119. As such, the defendants submitted that the claimant's version of events should not be believed and that the relief claimed by the claimant should be dismissed.

The submissions of the claimant

120. The claimant submitted that her evidence remained consistent throughout the trial. That she has proven that she was wrongfully arrested and detained without reasonable cause. According to the claimant, she was subjected to the actual control and will of the officers as they entered her apartment and bedroom and indicated their intention to take her to the fraud squad. The claimant further submitted that as the officers failed to inform her that she was under arrest and further failed to inform her of the reason for her arrest, her arrest was unlawful and she ought to be awarded damages for wrongful arrest.

121. The claimant relied on the case of ***Trevor Williamson v The Attorney General***[8] wherein Lord Kerr stated as follows;

"[19] Mr Beharrylal conceded that Mr Williamson had been arrested at his home on 28 July 2004. The Board considers that this concession was correctly made. In the first place in his witness statement, Mr Williamson himself said that he had been arrested. Secondly, Constable Caldeira gave evidence that he went with other officers to Mr Williamson's home to "make the arrest", although a short time later he said that Mr Williamson was not in fact arrested but was "detained for questioning". It is, of course, the position that there is no power to "detain for questioning". The power to arrest is contained in s 3(4) of the

[8] [2014] UKPC 29

Criminal Law Act, Ch 10:04 which provides that where "a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause suspects to be guilty of the offence." There is no statutory power to detain solely for the purpose of questioning.

[20] It is clear that, however Constable Caldeira chose to describe it, Mr Williamson's detention and his being taken into custody amounted to an arrest. The plain fact of the matter is that Mr Williamson was detained and was under compulsion to come to the police station and he knew the reasons that this was required of him. That was, as Mr Beharrylal accepted, sufficient to constitute a valid arrest. As Viscount Simon put it in Christie v Leachinsky [1947] AC 573, 587-588, [1947] 1 All ER 567, 45 LGR 201:

"The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained . . . a person is . . . required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed.""

122. As such, the claimant submitted that the plain facts of this case were that she was detained and was under the compulsion to go to the fraud squad. According to the claimant, she was unaware of the reason(s) for her detention which constitutes a wrongful arrest. The claimant further submitted that based on the evidence led by the defendants, she was solely detained for questioning.

Findings

123. The attempt by the witness for the defence to have this court believe matters which simply makes no good sense is disingenuous. It is the evidence of the defence that the purpose of the police in attending the home of the claimant on that day was simply to inform her of an appointment (made by others) to have her questioned later that very day at 8:00 a.m. That they arrived there shortly after 5:00 a.m. with armed officers for the

reason that they wanted to speak to the claimant before she left for work. They therefore obviously knew she was working and it is reasonable to find that they knew where she was working so that finding her could not have been an issue. It is also their case that they invited her to accompany them to the station and she accepted their kind invitation. Further, that at the station she was free to leave but she never asked to leave nor did they inform her that she could leave. The case for the defendant flies in the face of all logic and law as we know it for the following reasons.

124. Firstly, the court rejects outright the reason given for the visit to the premises in the early hours of that morning. It is implausible that a party of armed officers would visit someone at that hour (even if the home is located at Belmont, which the first defendant attempts to infer as the reason for being armed) simply to invite them to come to the station in roughly three hours' time. It goes without saying that if the motive of the officers was that of an invitation, and if they were so concerned that the claimant had to attend work, they would have visited her some time before the very day of the alleged appointment so that that she would have time to make the necessary arrangements to be interviewed. It is clear that the police acted under the presumption that they were entitled to treat the claimant as a suspect and proceeded to her home in the early hours of the morning so that she would have no choice in the matter. This was not an invitation and to suggest otherwise is to attempt to deceive this court.

125. Secondly, it is abundantly clear that the claimant was held and taken away by the officers on the testimony of the witnesses who observed the female officers enter the room and take her out by holding her arms. Clearly on this evidence she was being detained and carried away. In other words her liberty was being restrained by the police and she was being conveyed to the police station. The circumstances of an invitation and voluntary accompaniment would have been quite different.

126. Where an officer with reasonable cause suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he with reasonable cause, suspects

to be guilty of the offence.[9] The onus of establishing reasonable and probable cause for an arrest lies on the police.[10] The test for reasonable and probable cause has a subjective as well as an objective element. Therefore, the arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion.[11]

127. Of even more concern was the evidence of the first defendant. As set out above, the first defendant testified that whilst trying to communicate with the claimant, Farai in an insulting fashion, interrupted loudly. Farai's interruption was without the use of obscene language. While Farai was speaking in a loud voice, Tafara came to the door. The first defendant testified that Tafara stated that he was working for the DPP. He further testified that instead of helping to bring the situation under control, Tafara joined his brother in loudly disparaging the officers. Included amongst the comments were the use of the words "dogs" and "pigs" to describe the officers. According to the first defendant, Tafara did not ask why the claimant was being arrested as the claimant was not being arrested. That Tafara insulted the intelligence of the officers and compared them to animals.

128. He further testified that as they were there to request an interview and did not wish to cause any emotional distress, they used maximum tolerance towards the behaviour of Farai and Tafara. As such, the officers made no move to arrest them or act in any forceful manner towards them. Thandiwe eventually came onto the scene and she was very accommodating towards the officers. Thandiwe calmed her brothers to an extent and advised co-operation with the officers. As she did not calm her brothers entirely, the first defendant still had difficulties in fully advising the claimant of the situation without interjections.

129. *Also, the first defendant was of the view that Farai and Tafara was attempting to prevent or strongly discourage the claimant from attending the interview.* In light of his

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[9] Section 3(4)of the Criminal Law Chap 10:04

[10] See Dallison v. Caffery (1964) 2 All ER 610 at 619 D per Diplock LJ.

[11] Nigel Lashley v The Attorney General of Trinidad and Tobago Civ Appeal No 267 of 2011, Narine JA, paragraph 14

observations and the fact that they wanted to interview the claimant, he asked the claimant to accompany them to fraud squad instead of finding her way to the fraud squad's office later that day. *As such, it was the testimony of the first defendant that the claimant was invited to accompany them to the fraud squad because of the actions of Farai and Tafara.* He testified that he is not aware whether the claimant was told the aforementioned.

130. This evidence was nothing short of alarming to the court. In essence the first defendant appeared to be of the view that the claimant did not have a choice in the matter and that she had to attend the interview. So that the attempts by her husband according to him, to dissuade her from attending an interview was reason enough to "invite her to accompany the police" immediately. The court found that this evidence spoke volumes about the mindset and the intention of the police on that day. The first defendant was clearly of the view that the claimant had no say as to whether she would accompany the police to the station or not. Even if the persons in the home had used unkind adjectives to describe the officers on that day, the testimony of the first defendants shows that the purpose of the police was not to invite the claimant to the station but to detain her and take her to the station regardless of whether she was willing to go or not. It simply makes no sense that the police would ask the claimant to immediately accompany them because she was being advised not to attend the interview and names were being hurled at them. There recourse would be to arrest the suspect in such a case, which they did and the court so finds.

131. Further, ***Article 5, subsection 1 of the Act*** (see the First Schedule) provides that a request shall be executed as permitted by and in accordance with the domestic law of the Requested Party (Trinidad) and, to the extent not incompatible with such law, in accordance with any requirements specified in the request. As such, the first defendant would have been armed with the information contained in the request for assistance and therefore would have been acting under the impression that he was entitled to arrest. That was the purpose of the visit and the court so finds.

132. As a matter of law, this court does not have the evidence from the documents so that it is unable to determine whether reasonable suspicion existed to justify the arrest and so the defence has failed to justify the arrest.

133. In relation to the issue of the unkind words being meted out to the police the court notes that it is unnecessary to make a finding in that regard. However, both Farai and his brother ought to have known better and if they indulged in such behaviour same was highly inappropriate having regard to their chosen professions and ought not to be condoned. That by itself however could not have in law made the arrest and detention of the claimant lawful in the absence of reasonable grounds for suspicion. Further, as set out in ***Trevor Williamson*** supra there is no authority to detain for the purpose of questioning simpliciter.

134. The court therefore finds that there was in fact an unlawful detention or arrest of the claimant and therefore a trespass to her person.

Issue 4 - *whether the claimant was unlawfully detained and/or falsely imprisoned from the 10th to the 11th December, 2012*

135. In ***Alphonsus Mondesir v The Attorney General of Trinidad and Tobago***[12] Sinanan J (as he then was) stated as follows;

"It must be remembered that an arrest involves a trespass to the person which is prima facie tortuous. This trespass by the arrestor continues so long as he retains custody of the arrested person. The arrestor must justify the continuance of his custody by showing that it was reasonable."

The submissions of the claimant

136. The claimant submitted that the defendants have argued that she was not detained and was free to leave at any time. According to the claimant, she gave unshaken evidence that she was detained and was unable to leave. The claimant submitted that her evidence was corroborated by her husband, Farai who acted as her attorney during her detention.

[12] HCA 1903 of 1997

That the defendants failed to confute this evidence and further failed to provide any witness to show that she was not detained.

137. According to the claimant, it is passing strange that given the number of officers that attended her property to arrest her, the first defendant is the only one to give evidence although he testified that he had no dealings with the claimant during the thirty-six hours she was at the fraud squad.

138. The claimant submitted that the fraud squad Detainee register listed her as a detainee and stated that she was only allowed to leave at 5:30 pm on the 11th December, 2012. According to the claimant, this contemporaneous document supports the evidence given by her and Farai that she was detained as a prisoner and the length of her detention.

139. The claimant submitted that having established that she was detained, the defendant failed to offer any proper reason why she was so detained. According to the claimant, the first defendant's evidence that he was concerned that Farai and Tafara would try to prevent or strongly discourage her from attending the interview was not a sufficient reason to detain her. The claimant further submitted that the court should reject the first defendant's evidence that Farai and Tafara insulted the officers as this was categorically denied and not one of the officers saw it fit to warn, charge, arrest or even detain Farai and Tafara.

140. The claimant submitted that the first defendant decided to wrongfully arrest her through spite and malice because the officers knew that their actions were unlawful, Farai and Tafara were knowledgeable of the law and refused to be bullied by the officers and specifically sought to tell the officers of their breaches of the Judges Rules and procedures. As such, the claimant submitted that she was not detained for questioning but out of spite and malice for the alleged behaviour of Farai and Tafara although at all times Farai and Tafara conducted themselves as attorneys and insisted that the proper procedure be followed by the arresting officers. Consequently, the claimant submitted that her detention was unlawful.

The submissions of the defendant

141. The defendants submitted that the claimant's name appearing in a document called the detainee register is not conclusive proof that the claimant was indeed detained.

142. Further, the defendants submitted that it stands as a matter of record that an unsuccessful attempt was made to have another officer involved provide a witness statement in these proceedings, and that the effort was not successful because that other officer refused to sign or provide such a witness statement. As such, the defendants submitted that the reference to the testimony situation being passing strange ought not to negatively influence the mind of the court.

Findings

143. The court finds that it is disingenuous of the defence to suggest that the pregnant claimant was free to leave the police station if she wanted. It is the finding of the court that she was unlawfully arrested and taken to the station and so if as the defence claims she was free to leave, she ought to have been told that she was free to leave. But the evidence is to the contrary. The first defendant admitted that he did not inform her that she could have left. But what is even more startling is his assertion that she did not ask to leave. It means if one is to follow the skewed logic, that the burden lies with the detainee to ask to leave in circumstances where she is detained without consent. The abundance of evidence in this case (which bears no repeating) shows that the claimant was not allowed to leave the police station and therefore the unlawful detention continued until her release on the 11th December.

144. It is the evidence of Farai that he asked the officers after the first day of questioning whether the claimant could leave with him and they said she could not, that she was not allowed to leave. The court believes this evidence as he is an attorney at law and would be well aware of the rules. It can hardly be envisaged that a lawyer would stand by while his wife is kept against her will without ascertaining whether she is being detained. It is more likely than not that he asked the question and the court so finds. It follows that the court

also believes that he was told that she could not. This evidence also supports her evidence on the issue.

145. The court also agrees with the submission by the defendant that a record which lists the claimant as a detainee is not by itself evidence that she was in fact a detainee. But in all of the circumstances of this case, all of the evidence points to the fact that she was a detainee so that the record simply supports the evidence.

Issue 4 – *if the defendants are found liable for any of the above, whether the claimant is entitled to damages, including aggravated and exemplary damages.*

General Damages

False imprisonment

146. Damages in cases of malicious prosecution and false imprisonment 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; and
iii. Deprivation of liberty- by reason of arrest, detention and/or imprisonment. [13]

147. Further, in ***Thaddeus Bernard v Quashie,***[14] de la Bastide C.J. stated the following in relation to aggravated damages;

"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

[13] See Thadeus Clement v the Attorney General of Trinidad and Tobago Civ. App. 95 of 2010 at paragraph 12, per Jamadar JA
[14] CA No 159 of 1992

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."

The submissions of the claimant

148. The claimant submitted that the undisputed evidence is that she was detained in the fraud squad for thirty-six hours. As such, the claimant submitted that she was deprived of her liberty for thirty-six hours.

149. Further, the claimant submitted that the unchallenged evidence is that her business of providing services as a Business Consultant flopped as a direct consequence of her false imprisonment. Moreover, the claimant submitted that her co-workers at iGovtt treated her with a degree of skepticism and some of her colleagues even made fun of her while others stopped interacting with her.

150. According to the claimant, she also gave unchallenged evidence that she was pregnant and suffered a lot of back pain and pelvic pain from sitting for such long periods. The claimant also testified that she became depressed and stressed.

151. The claimant further gave evidence that she and her family were well known within the community and suffered a great deal of humiliation after the police raided their house in the early hours of the morning and described her as the lead con artist, defrauding the tax authorities in the UK.

152. The claimant submitted that the court ought not to allow the first defendant to get away with a simple "slap on the wrist" as had it not been for the fact that her husband and in-laws were attorneys attempting to assert her rights under the laws of Trinidad and Tobago, the officers would not have maliciously detained her. According to the claimant, she was made to pay and/or suffer for the alleged transgressions of her husband and brother-in-law.

153. The claimant submitted that an award of $150,000.00 for false imprisonment inclusive of aggravated damages is appropriate in the circumstances of this case. In so submitting the claimant relied on the following cases;

i. ***Mustapha Ghanny v Ramadhin and The Attorney General***[15], Rajkumar J - The claimant was awarded the sum of $45,000.00 in general damages for false imprisonment for a period of seventeen to eighteen hours of his detention. According to the claimant, ***Mustapha Ghanny*** supra reflects half of the time that she was deprived of her liberty and the injury to feelings, dignity and reputation suffered by her distinguishably outweighs this authority.

ii. ***Frank and Bathazar v The Attorney General***[16], Boodoosingh J – the claimant was detained from the 9th to the 12th August, 2011 and the claimants were awarded a sum of $65,000.00 each.

The submissions of the defendants

154. The defendants submitted that if any quantum of damages is found necessary, an appropriate range for the tort of false imprisonment inclusive of aggravated damages would be $40,000.00 to $50,000.00. In so submitting the defendants relied on the following authorities;

i. ***Koon Koon v AG***,[17] Kokaram J - the claimant was awarded $35,000.00 in general damages including aggravated damages for false imprisonment and wrongful detention damages for thirty-two hours. The conditions of aggravation included a filthy cell, being unable to eat or sleep for the period of detention, and being unable to see his family for the period of detention. The sum of $35,000.00 updated to February, 2018 is approximately $48,000.00 in damages for false imprisonment inclusive of aggravation.

[15] CV2015-01921
[16] CV2015-02719
[17] CV2007-02192

ii. ***John Henry v AG***[18], Des-Vignes J - the claimant was awarded $35,000 in damages for thirty-four and a half hours of false imprisonment inclusive of aggravated damages. The conditions of aggravation included a filthy cell in which the claimant had to sleep on the cold, hard, dirty concrete floor. The sum of $35,000.00 updated to February 2018 is approximately $47,873.00 inclusive of aggravation.

155. The defendant submitted that in the instant case, the claimant claims for false imprisonment for thirty-six hours. According to the defendants, the one and a half hour to four hour difference between the aforementioned cases and the instant case is not particularly important with respect to the quantum of damages to be awarded.

156. The defendants submitted that in the cases of ***Koon Koon*** supra and ***John Henry*** supra there was an element of aggravation relating to humiliation. According to the defendants, the aggravation in this case was substantially less grave than the cases of **Koon Koon** and **John Henry** since there was absence of cell conditions. The defendants further submitted that in this case there was no question of the claimant being deprived of food or being unable to eat as her family brought her food and she ate it.

157. Accordingly, the defendants submitted that even if the newspaper article is considered, a figure below $50,000.00 for false imprisonment inclusive of aggravated damages is appropriate. The defendants further submitted that the newspaper article ought not to be considered in determining the damages payable by the defendants, because the newspaper article cannot in any way be tied to the defendants due to the following;

i. There was no evidence that the first defendant had anything to do with the media, and it was explicitly denied that he communicated with the media about the arrest; and

ii. The article spoke of "well-placed sources", but did not give any indication whatsoever that those sources were within the police service, or the public service, and as such there was no kind of evidence whatsoever which can tie the newspaper article to the second defendant.

[18] CV 2007 – 03897

158. As such, the defendants submitted that if the court accepts to remove the newspaper article from consideration, the appropriate sum in damages will decrease further.

Findings

159. In determining a just award of damages under this head, this court took into account inter alia the following factors;

i. That the claimant's period of loss of liberty was thirty-six hours;

ii. She was pregnant at the time of her detention;

iii. She was initially forced to sleep on a chair;

iv. She was never arrested prior to this incident;

v. The newspaper article because the article would have been as a direct result of her unlawful detention which was effected by the police;

vi. She felt embarrassed and ashamed in her community after the article was published; and

vii. Her business was damaged.

160. Therefore, having regard to the evidence before the court and the awards in similar in similar cases, the court finds that a just award for general damages which sum includes an uplift for aggravation is the sum of $65,000.00.

Exemplary damages

161. 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;

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[19] (1964) AC 1129

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.

The submissions of the claimant

162. The claimant submitted that the actions of the first defendant and the party of officers were very oppressive and arbitrary. The claimant asked the court to find that the first defendant chose to wrongfully arrest, unlawfully detain her and leak news to the media in an attempt to bolster his position within his organization.

163. Consequently, the claimant submitted that an appropriate award for exemplary damages is the sum of $40,000.00. The claimant further submitted that this sum should be paid by the first defendant personally and not out of the public purse.

The submissions of the defendants

164. The defendants submitted that even if the claimant's case is believed, exemplary damages are not appropriate as there was an absence of serious aggravating conduct which exceeds the ability of general damages inclusive of aggravated damages to properly compensate. The defendants further submitted that even on the claimant's version of the events (bearing in mind the absence of any cell conditions and the absence of force used in the alleged arrest), the actions of the state were not sufficiently oppressive or arbitrary to justify an award of exemplary damages.

Findings

165. The court finds that this is a suitable case for an award of exemplary damages. It is the finding of the court that the police would have acted based on information provided in the request but that they have failed to put that request before the court. In those circumstances the court has no basis upon which to find that the actions were not arbitrary or oppressive in light of the unlawful arrest and detention. The court will therefore award the sum of $10,000.00 as exemplary damages.

Trespass to property

166. A claimant is entitled to nominal damages for trespass to land even if no loss or damage is thereby caused. Such damages will be given for largely innocuous invasions, or in cases where the claimant has been fully compensated by some other remedy. If the trespass is more serious, for example involving substantial interference with property or with privacy, then substantial damages may be recovered. Consequential losses may be claimed, as can damage to the land itself or buildings or fixtures on it.[20]

The submissions of the defendants

167. The defendants submitted that as no damage was proven or claimed, nominal damages will be appropriate. The defendants further submitted as follows;

i. A figure in the vicinity of $5,000.00 is appropriate if is found that there was trespass onto the claimant's yard only and

ii. A figure in the vicinity of $8,000.00 is appropriate if trespass is found to include the inside of the claimant's house. This larger sum is to encompass the greater violation of the claimant's privacy and rights.

168. In so submitting, the defendants relied on the following authorities;

i. **Bally v Francis**[21] - wherein there was alleged destruction of crops the sum of $7,500.00 in damages was awarded by this court; and

ii. **Lashley v Marchong and Honore**[22] - there was allegation of destruction of an entire house however the value of house as special damages was not proved and so nominal damages of $15,000.00 was awarded by Narine JA and Jones JA (Bereaux JA dissenting).

169. According to the defendants, in the above mentioned cases, far graver harm was alleged but none could have been proven.

[20] Halsbury's Laws of England, Volume 29 (2014), para 420
[21] CV 2012 – 02646
[22] Civil Appeal 266 of 2012

Findings

170. Although the claimant has proven that the first defendant and his party of officers trespassed onto her yard and into her apartment, she has not proven any specific loss in that regard. Therefore, the court is of the view that in the circumstances of this case, the claimant should be awarded the sum of $8,000.00 as nominal damages for trespass to land.

Trespass to person

The submissions of the claimant

171. According to the claimant, it is settled law that trespass to person whether by assault, battery or false imprisonment is actionable without proof of actual damage. The claimant submitted that she ought to be awarded nominal damages for trespass to person.

The submissions of the defendants

172. The defendants denied that there was any battery of the claimant. However, it was submitted that if it is found that the hands of the officers were placed on the claimant without her consent, then nominal damages would be appropriate. The defendants suggested the sum of $1,000.00.

Findings

173. A battery is an act of the defendant which directly and intentionally or recklessly causes some physical contact with the person of the claimant without his consent.[23] The court finds that there was a battery of the claimant as she was held by the

[23] Halsbury's Law of England (Volume 97 (2015), para 529

female officers without her consent. The court will therefore award nominal damages in the sum of $2,500.00 for trespass to person as no specific loss was proven.

Interest

174. The defendants submitted that interest on general damages is normally awarded from the time of the filing of the Claim to the time of judgment. According to the defendants, while the figures provided in ***Attorney General v Fitzroy Brown and others***[24] are not binding per se, the rate of 3% interest per annum on general damages, as endorsed in that case, should be utilised by this court.

175. In the case of the ***Attorney General v Fitzroy Brown*** supra, the Court of Appeal 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 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

176. The judgment of the court is therefore as follows;

a. It is declared that the claimant was falsely imprisoned and/or unlawfully detained from 5:30 a.m. on the 10th December, 2012 to 5:30 p.m. on the 11th December, 2012.

b. The second defendant shall pay to the claimant general damages for false imprisonment and/or unlawful detention inclusive of an uplift for aggravation in the sum of $65,000.00, together with interest thereon at the rate of 2.5% from the 19th October, 2016 to the 21st June, 2018.

[24] CA 251 of 2012

c. The second defendant shall pay to the claimant exemplary damages in the sum of $10,000.00.
d. The second defendant shall pay to the claimant nominal damages for trespass to land in the sum of $8,000.00.
e. The second defendant shall pay to the claimant nominal damages for trespass to person in the sum of $2,500.00.
f. The second defendant shall pay to the claimant the prescribed costs of the claim.

Dated this 21st day of June, 2018

Ricky Rahim

Judge