

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No: CV2016-04122

Between

**GERARD SCOTT**

Claimant

And

**THE ATTORNEY GENERAL OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

Defendant

**Before the Honourable Mr. Justice R. Rahim**

Date of Delivery: November 29, 2018

Appearances:

Claimant: Mr. M. Gayle instructed by Ms. K. Joseph

Defendant: Ms. M. Davis instructed by Mr. N. Smart

## JUDGMENT

1. By Claim Form filed on November 15, 2016 the claimant seeks damages inclusive of aggravated and/or exemplary damages for the violation of his constitutional rights enshrined under sections 4(a), 4(b), 4(c), 4(d), 4(g), 4(i), 5(2)(a), 5(2)(c), 5(2)(e) and 5(2)(h) of the Constitution, wrongful arrest, false imprisonment and malicious prosecution.
  
2. The incident which gave rise to the claimant's claim occurred on July 13, 2015 when immediately upon being released from the Port of Spain Prison on Fredrick Street, the claimant was arrested by officers of the Immigration Division of the Ministry of National Security. He was thereafter conveyed to and imprisoned and/or detained at the Immigration Detention Centre in Aripo for one hundred and fifty-nine days.
  
3. The claimant avers that he is a citizen of Trinidad and Tobago and a holder of a Trinidad and Tobago passport, first issued in or around March, 1976 and thereafter renewed. He further avers that he is the holder of a Trinidad and Tobago Identification Card, No. 19560903028.
  
4. The claimant claims that the immigration officers failed to conduct any proper or thorough investigation of the facts relating to his immigration status and/or nationality prior to arresting and/or unlawfully detaining him. As such, it is the case of the claimant that the immigration officers lacked reasonable and probable cause for arresting and detaining him. He was released from the Immigration Detention Centre on December 20, 2015.

5. By Defence filed on February 2, 2017 the defendant admits that the claimant was arrested on July 13, 2015 by officers of the Immigration Division of the Ministry of National Security. However, the defendant denies that the immigration officers lacked reasonable and probable cause to arrest and detain the claimant.
6. According to the defendant, when a prisoner does not give his or her identity as a national of Trinidad and Tobago, the Immigration Office is informed and contacted upon their release from prison. The defendant claims that prior to the claimant's release from prison on July 13, 2015, he was asked to contact someone so that he could have produced his Commonwealth of Dominica birth certificate. A detention order was also issued.
7. The defendant claims that on July 13, 2015 when the claimant was interviewed, he indicated that he was born in Dominica, is a citizen of Dominica and lived at Ward Lane Extension, El Socorro, San Juan.
8. On July 17, 2015 the Chief Immigration Officer wrote to the Permanent Secretary of the Ministry of Foreign and CARICOM Affairs ("the PS") to notify the PS of the detention of the claimant who at that time indicated that his name was Gerard Scott and that he was a citizen of Dominica. The Chief Immigration Officer requested any assistance in obtaining valid travel documentation in order for the claimant to be repatriated to his homeland. The defendant avers that whilst the Immigration Office was making arrangements to obtain travel documents for the claimant, the claimant did not inform anyone of his true identity.

9. The defendant claims that on July 29, 2015 the claimant informed the immigration officers that his real name was Julien de la Bastide and that he was not born in Dominica but in St. Lucia on September 3, 1956. According to the defendant, the claimant's change in identity and the false information given caused the Immigration Division to experience additional difficulty and delay in identifying him. On August 3, 2015 the Chief Immigration Officer then wrote to the PS rescinding the request of July 17, 2015 and advising that the claimant had now indicated that his correct name and place of birth was Julien de la Bastide and St. Lucia respectively.
  
10. The defendant claims that the claimant then informed the Immigration Division that he has five children and that one lives in Canada, one lives in St. Lucia, two live in New York and one lives in Dominica. The claimant also indicated that his sister, Margaret Lee Young ("Margaret") lives in Trinidad. The Immigration Division experienced difficulty in locating Margaret.
  
11. According to the defendant, on December 1, 2015 when the claimant was interviewed again, he informed the immigration officers that he was known by four names, Gerard Scott, Gerard Chambers, Peter Davidson and Julien de la Bastide. The defendant avers that up until that time, the claimant did not and could not produce a birth certificate or any form of identification to the Immigration Division. The defendant further avers that the claimant continued to give false information to the immigration officers when he was questioned. Moreover, the defendant avers that when the claimant was interviewed, he never revealed that he had previous Trinidad and Tobago passports.

12. The defendant claims that it was only on December 18, 2015 the claimant indicated in another interview that he applied for a replacement of his Trinidadian identification card at the Point Fortin Identification Card Office. The claimant further informed the interviewers that his real name was Gerard Scott. The claimant was questioned as to why he did not reveal this information initially, but he remained silent.
  
13. As a result of the information which was revealed on December 18, 2015 the Chief Immigration Officer contacted the Point Fortin Identification Card Office and was informed that an identification card for one Gerard Scott was still awaiting issue for eight years. On December 21, 2015 arrangements were made for the claimant to be escorted to the Point Fortin Identification Card Office. Ronald Aberdeen, an Immigration Officer II who accompanied the claimant to the Identification Card Office, verified that there was a Trinidad and Tobago identification card which bore the name and likeness of the claimant.
  
14. According to the defendant, the claimant was informed by Gewan Harricoo who was the Administrator in charge of the Detention Centre at that time, that the possession of a Trinidad and Tobago identification card was not conclusive evidence that he is a citizen of Trinidad. The claimant was released on December 21, 2015 and told to visit the Enforcement Unit of the Immigration Division located at No. 135 Henry Street, Port of Spain with all of his relevant documents as proof of how he acquired Trinidad and Tobago citizenship. To date, the claimant has not provided the Enforcement Unit of the Immigration Division with any proof of how he acquired Trinidad and Tobago citizenship.

15. As such, it is the claim of the defendant that as a result of the aforementioned, the immigration officers had reasonable and probable cause to arrest and detain the claimant until December 21, 2015.

### **ISSUES**

16. The parties have agreed that the claimant has no cause of action in malicious prosecution because he has not established the elements of malicious prosecution. Therefore, the issues to be determined by this court are as follows;
  - i. Whether the claimant was informed of his right to an attorney;
  - ii. Whether the arrest of the claimant was lawful;
  - iii. Whether the claimant was falsely imprisoned from July 13, 2015 to December 21, 2015;
  - iv. Whether the claimant's detention violated his constitutional rights enshrined under sections 4(a), 4(b), 4(c), 4(d), 4(g), 4(i), 5(2)(a), 5(2)(c), 5(2)(e) and 5(2)(h) of the Constitution; and
  - v. If the defendant is found liable for any of the above, whether the claimant is entitled to damages, including aggravated and exemplary damages.

### **CASE FOR THE CLAIMANT**

17. The claimant gave evidence for himself. He is a sixty-two year old, retired school teacher. During cross-examination, the claimant testified that he has a teaching certificate from a St. Lucian teaching college and that he attended the teaching college prior to coming to Trinidad. He further

testified during cross-examination that he taught at two institutions in St. Lucia.

18. According to the claimant, he is a citizen of Trinidad and Tobago. His father, John Lennox Scott ("John") was born in Port of Spain in or around November 6, 1936. John and the claimant's mother met and got married in Dominica on March 15, 1956. The claimant was born on September 3, 1956 and lived in Dominica until in or about 1967. He moved to Trinidad in February, 1976 when he was nineteen years of age and has continued to reside in Trinidad since that time.
19. On his arrival in Trinidad, John and he went to the Immigration Division to make the necessary arrangements for the claimant to obtain a Trinidad and Tobago passport. The claimant recalled that he and John dealt with a person called Mr. Butkin who the claimant believes was the Chief Immigration Officer at that time. The claimant testified that he was duly issued a Trinidad and Tobago passport shortly thereafter.
20. Having been first issued with a Trinidad and Tobago passport in or about 1976, the claimant renewed his passport on expiry two or three times. In or about 1989, he lost his passport in Antigua and was issued an emergency travel document and returned to Trinidad. On his return to Trinidad, he obtained a replacement passport in or about 1989.
21. During cross-examination, the claimant testified that he did not give up his Dominican passport and that he has dual citizenship. He however, did not apply for dual citizenship as he thought he became a dual citizen automatically.

22. The claimant testified that the last time he left Trinidad and Tobago was around 1993. John was living in St. Lucia at that time and was unwell. As such, the claimant went to visit him. The claimant's passport expired at some point after that, possibly in or around 1999 and he never renewed same. He has in the years since then lost that old passport and is no longer in possession of the older ones.
23. The claimant is the holder of a Trinidad and Tobago National Identification Card ("ID card") No. 19560903028.<sup>1</sup> During cross-examination, the claimant testified that he made a report to the Elections and Boundaries Commission in Port of Spain that he lost his original ID card.
24. On July 13, 2015 ("the said date") the claimant was released from the Frederick Street Prison ("the prison") where he had just completed serving a term of imprisonment for trafficking of cocaine. During cross-examination, the claimant testified that he told the prison authority that his name is Gerard Scott and that he was living at 55 Ward Lane Extension, El Socorro, San Juan at that time. Further during cross-examination, he testified that he told the prison authority that he is a Dominican by birth, that he is a Trinidadian citizen and that he has five children.
25. Immediately upon his release from prison, he was accosted by two men. One of the men asked him if he was Gerard Scott and he answered in the affirmative. He had never met the men before and did not know where they worked at that time. The men did not identify themselves to the claimant as Immigration Officers.

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<sup>1</sup> The claimant attached a copy of his ID card to his witness statement at "A".



26. A friend of the claimant, Pastor Cummings was present when the men approached the claimant as Pastor Cummings had gone to pick the claimant up from prison. Thereafter, the same man who had asked the claimant if he was Gerard Scott told the claimant to follow him.
27. The claimant was escorted to a silver-grey coloured van. He complied with the instructions given to him as he felt as though if he did not accompany the men, he would have been harmed in some way. He was bewildered by what the men asked him and was also afraid.
28. The claimant was then taken to the Immigration Division offices somewhere nearby in Port of Spain. He was taken through what seemed to him to be a back door. He was then placed to sit in an area where there were a lot of computers. He was questioned by one of the two men for a long period of time. He testified that he kept telling the man that he is a Trinidadian and that his father was a Trinidadian. He further told the men that he had a Trinidad and Tobago ID card and that he had to collect it at the Elections and Boundaries Commission (“EBC”) in Point Fortin. The men informed the claimant that an ID card did not make him a citizen.
29. During cross-examination, the claimant testified that he told the immigration officers that he was issued a Trinidad and Tobago passport in 1976. He further testified during cross-examination that he believes he told the immigration officers that he had lost his passport and that he had obtained a replacement passport in 1989 when he lost same in Antigua. Moreover, during cross-examination the claimant denied that he told the immigration officers that his name was Julien de la Bastide, Gerard Chambers and Peter Davidson.

30. The claimant testified that he begged the Immigration Officers to contact the EBC to verify his identity but they did not. At about 4:15 pm on the said date, the claimant was placed in a twelve seater van and taken to the Immigration Detention Centre (“IDC”) located along the Eastern Main Road, Aripo, Arima.
31. At the IDC, the claimant was kept for one hundred and fifty-nine days. He testified that as he was estranged from the majority of his family members at that time, there was no one to assist him.
32. The claimant testified that at no point in time on the said date or during the subsequent days he spent at the IDC did the immigration officers advise him of his right to speak with a lawyer.
33. According to the claimant, the conditions at the IDC were prison-like in nature. He was issued an orange jumpsuit with the words “IDC” printed on the back. He slept in a dormitory like a cell with about thirty other persons who were also detained. Those persons included people from various African and Asian countries as well as Jamaicans, Cubans, Latvians, Grenadians and Estonians.
34. The claimant testified that there were regular fights amongst the persons detained and that he often felt unsafe and scared. On at least three different occasions during the period in which the claimant was incarcerated, police and detention officers raided the dormitories. On one of those occasions, there was a serious fire which caused an evacuation of the IDC and at least one inmate was shot by the police. On another occasion, the IDC was locked down for over a week and the claimant

received his food through a hole in the cell door which was a very de-humanizing experience for him.

35. He was allowed an hour's time outside of the dormitory per day which had to be spent on the basketball court with all the other detainees. He was permitted one phone call per week and so during the time he spent at the IDC he was unable to reach any of his friends or family to inform them of where he was. During cross-examination, the claimant testified that he tried to call Pastor Cummings once as he does not have any next of kin in Trinidad. He further testified during cross-examination that the IDC did not allow international calls and if it did, things would have been sped up in relation to his documents.
36. One day during his period of incarceration, he was interviewed by a man named Ronald Aberdeen ("Aberdeen") who was an immigration officer. The claimant informed Aberdeen that he had an ID card at the EBC that would show that he was a Trinidadian citizen. Sometime thereafter which may have been as long as a month later, Aberdeen informed the claimant that the Immigration Division had verified that information.
37. Some days later on or about December 20 or 21, 2015 the claimant was taken to the EBC, Point Fortin. He was accompanied by two detention officers to collect his ID card. After collecting his ID card, he was taken back to the IDC and informed that he had to sign a release voucher. He was released from the IDC on the same day.
38. Upon his release from the IDC, his belongings which had been confiscated at the time of his incarceration were returned to him.

39. According to the claimant, to this date, neither has he been given a reason for his detention nor an apology for same. He testified that words can never explain what he went through or how he feels having been subjected to such a lengthy period of detention at the IDC. He is deeply embarrassed by the whole situation surrounding his detention.
40. During cross-examination, the claimant testified that he has been employed by a number of companies in Trinidad and Tobago. Some of those companies are National Gas Company (“NGC”), Damus Limited, American Life Insurance, etcetera. He further testified during cross-examination that when he was applying for employment at the NGC, he had to fill out an application form and on that application form he did state that he is a Trinidadian.

#### **THE CASE FOR THE DEFENDANT**

41. The defendant called two witnesses, Gewan Harricoo and Keith Hercules.
42. Gewan Harricoo (“Harricoo”) has been an immigration officer for approximately nineteen years. At the material time, he was in charge of the IDC. On or around October 23, 2015 he was placed in charge of the Enforcement Unit of the Immigration Division. Consequently, he has custody and access to all records at the Enforcement Unit. He has perused the claimant’s immigration case file and found the information therein to be true and correct. During cross-examination, Harricoo testified that nowhere in the claimant’s file does it state that the claimant was advised of his right to speak with a lawyer. He further testified that he did not advise the claimant of his right to speak with a lawyer.

43. According to Harricoo, the Immigration Officer IV in charge of the Enforcement Unit usually gives the directive to pick up detainees or persons from the prisons. He testified that Mr. Willis, the Immigration Officer IV at the material time would have given the directive to pick up the claimant based on information immigration would have received from the prison, that is, the claimant who was being released from prison was a national from the Commonwealth of Dominica.
44. According to Harricoo, the claimant's record indicated that he had been convicted and sentenced for trafficking of narcotics and possession of cocaine. When a person enters the prison system, they are required to give their nationality. As such, it was the testimony of Harricoo that if the claimant had given his nationality as Trinidadian, the immigration office would not have been contacted upon his release. Upon the claimant's release on the said date, immigration officers met him at the prison and he was taken to the Enforcement Unit of the Immigration Division in Port of Spain where he was interviewed by Immigration Officer II, Dale Ramsingh ("Ramsingh"). During cross-examination, Harricoo testified that he was not present when the claimant was picked up outside the prison on the said date.
45. According to Harricoo, the immigration's records show that Ramsingh having interviewed the claimant wrote on his file that he (Ramsingh) informed the claimant that he should contact someone to produce his birth paper from the Commonwealth of Dominica. <sup>2</sup>
46. On the said date, the claimant indicated that he came to Trinidad sometime in the seventies and was not in the possession of his passport or

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<sup>2</sup> A copy of the case file minutes was attached to Harricoo's witness statement at "G.H.1".

travel document. According to Harricoo, as the claimant was a foreign national and had been convicted of an offence and served time in the State Prison for more than one year, he was a person described in Section 9 (4) (b) and (c) of the Immigration Act Chapter 18:01. As such, a Detention Order was issued by the then Immigration Officer IV in charge of the Enforcement Unit for the claimant's detention at the IDC.<sup>3</sup> The claimant was detained to be placed before the Special Inquiry to determine whether or not he should be deported.

47. At the interview on the said date, basic information on the claimant was taken. The basic information included the claimant's name, identify, country of citizenship, marital status, occupation, place of birth, nationality and other information. The claimant refused to sign the information sheet.<sup>4</sup> The claimant also indicated that he had a sister in Trinidad named Margaret Lee Young ("Margaret"). All efforts to find his sister proved futile.
48. According to Harricoo, the records show that by letter dated July 17, 2015 the Chief Immigration Officer wrote to notify the Permanent Secretary of the Ministry of Foreign ("the PS") of the detention of a foreign national in the name of Gerard Scott of the Commonwealth of Dominica.<sup>5</sup> As such, it was testimony of Harricoo that the Chief Immigration Officer attempted to process the claimant and requested that assistance be rendered to the claimant in obtaining valid travel documents so that he could be repatriated to his homeland.
49. On July 29, 2015 the claimant requested an interview with Harricoo as Harricoo was the Administrator in Charge of the IDC. When Harricoo

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<sup>3</sup> A copy of the detention order was attached to Harricoo's witness statement at "G.H.2".

<sup>4</sup> A copy of the information sheet was annexed to Harricoo's witness statement at "G.H.3".

<sup>5</sup> A copy of this letter was annexed to Harricoo's witness statement at "G.H.4".

interviewed the claimant, the claimant indicated that his real name was Julien De La Bastide and that he was born in St. Lucia on September 3, 1956. The claimant further informed Harricoo that he gave his name as Gerard Scott to the prison and police authorities in order to protect his real identity. According to Harricoo, at no point in time during the interview did the claimant reveal that he has previous Trinidad and Tobago passports. At approximately 11:45 am that day, Harricoo communicated the aforementioned information to the Immigration Officer IV at the Enforcement Unit so that they could make the necessary investigations. On the claimant's case file, Harricoo observed that Ramsingh made a contemporaneous note of this event.<sup>6</sup>

50. According to Harricoo, the records also showed that by another memorandum dated August 3, 2015 the Chief Immigration Officer wrote to the PS rescinding the request of July 17, 2015 and advising that the claimant had now indicated that his correct name and place of birth was Julien de la Bastide and St. Lucia respectively.<sup>7</sup>
  
51. On December 1, 2015 the claimant was interviewed by Keith Hercules ("Hercules") who was the Acting Immigration Officer IV at the IDC at the time. Hercules informed Harricoo that the claimant indicated to him that he was known by four names. As a result of that new information, Harricoo made a contemporaneous note on the claimant's case file.<sup>8</sup> During this interview, the claimant also indicated that he could not produce a birth certificate or any form of identification.

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<sup>6</sup> See file not 2 in exhibit "G.H.1".

<sup>7</sup> A copy of this memorandum was annexed to Harricoo's witness statement at "G.H.5".

<sup>8</sup> See file note 3 in exhibit "G.H.1".

52. On December 18, 2015 the claimant was interviewed by Harricoo and Hercles. According to Haricoo, it was only at this interview the claimant revealed that he had applied for a replacement of his Trinidad and Tobago ID card at the Identification Card office in Point Fortin. The claimant also indicated during this interview that his correct name is Gerard Scott. When the claimant was questioned as to why he did not reveal this information initially, he remained silent.
53. Harricoo testified that from the said date to December 18, 2015 the claimant indicated that he was born in Dominica and St. Lucia respectively. As such, it was the testimony of Harricoo that during the interview on December 18, 2015 it was the first time the claimant mentioned anything about a Trinidad and Tobago ID card. Harricoo made a contemporaneous note of this information on the claimant's file.<sup>9</sup>
54. Based on the aforementioned information, Hecules contacted the Point Fortin ID card office and was informed that an identification card in the name of Gerard Scott was awaiting issuing for almost eight years. On December 21, 2015 arrangements were made for the claimant to be escorted to the Point Fortin ID card to verify the said information. He was accompanied by Detention Officer II, Cynthia Tinkew, Detention Officer I M. Francis and Immigration Officer II Aberdeen. Aberdeen verified that there was in fact a Trinidad and Tobago ID card bearing the name and likeness of the claimant. Aberdeen then contacted Immigration Officer IV Enforcement, who indicated that whilst an ID card is not conclusive evidence to support a claim of citizenship, the claimant would be released upon arrival at the IDC.

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<sup>9</sup> See file note 4 in "G.H.1".



55. Harricoo testified that had the claimant indicated all along that he had a Trinidad and Tobago ID card, the situation could have been different. That due to the claimant's untruthfulness and erroneous information, a detention order was issued. Harricoo further testified that the false information which the claimant gave to the Immigration Department and the immigration officers caused difficulty and delay in processing him.
56. At the IDC, Harricoo informed the claimant via telephone that having possession of a Trinidad and Tobago ID card is not conclusive evidence that he is a citizen of Trinidad and Tobago. Harricoo testified that that was because of the fact that the claimant's ID card stated that he was born in Dominica. When Harricoo questioned the claimant on how he became a citizen, the claimant evaded the question but then indicated that it was probably through his father and that he does not know his father's name. The claimant was then informed that he is required to visit the Enforcement Unit of the Immigration Division located at 135 Henry Street, Port of Spain within one month with all relevant documents as proof to show how he acquired Trinidad and Tobago citizenship. The claimant indicated that he would do so.
57. The claimant was also informed that he would need to provide his Commonwealth of Dominica birth certificate and his father's Trinidad and Tobago birth certificate as source documents of his claim and that other documents might be required.
58. On February 19, 2016 Harricoo noted on the claimant's file that the claimant had not contacted the Enforcement Unit with documentary proof

of his citizenship.<sup>10</sup> Harricoo testified that all attempts to contact the claimant via his cell phone proved futile.

59. On April 25, 2016 Harricoo again noted on the claimant's file that the claimant failed to contact the Enforcement Unit with regards to his citizenship and that efforts to contact the claimant proved futile.<sup>11</sup>
60. Harricoo testified that Dr. Bissessar, the District Medical Officer visits the IDC once per week usually on Thursdays to attend to the medical needs of the detainees. That there is a standard procedure that all new detainees upon entry into the IDC must be examined by the Emergency Technician on duty and so at the next visit of the medical doctor, it is mandatory that the detainee be seen. Thereafter, if the detainee makes a request for the doctor they will be seen.
61. According to Harricoo, no special inquiry was held as the claimant gave false information and was not identified. Once a person cannot be identified, a special inquiry would not be convened.
62. As far as Harricoo is aware, no Freedom of Information request was received from the claimant in relation to his information about his Trinidad and Tobago passport, travel patterns or records pertaining to his detention.
63. During cross-examination, Harricoo testified that the Immigration Division does not have the right or power to arrest a Trinidadian under sections 14, 15 and 16 of the Immigration Act Chapter 18:01. He further testified that

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<sup>10</sup> See file note 8 in exhibit "G.H.1".

<sup>11</sup> See file note 9 in exhibit "G.H.1".

in order to arrest someone pursuant to section 15 of the Immigration Act one must first satisfy himself that the person is not a Trinidadian. Moreover, during cross-examination Harricoo testified that the Chief Immigration Officer did not make a declaration pursuant to section 9(4) of the Immigration Act that the claimant has ceased to be a permitted entrant of Trinidad.

64. During cross-examination, Harricoo was referred to a record of passport issued to the claimant annexed to the defendant's bundle of documents filed on October 24, 2017.<sup>12</sup> Harricoo testified that this document was an emergency travel document issued to the claimant by the Trinidad and Tobago passport authority.
65. Harricoo was then referred to a record of travel between 1976 to 1999 in the name of the claimant annexed to the defendant's bundle of documents filed on October 24, 2017.<sup>13</sup> Harricoo agreed that in this document it is stated that the nationality of the claimant was Trinidad and Tobago. He testified that he had access to this information but that having a Trinidad and Tobago nationality does not mean that a person is a Trinidad and Tobago citizen. That a Commonwealth national residing in a certain territory can be a national of that territory but not necessarily a citizen of that territory. He further testified that a citizen of the Commonwealth is not a citizen of Trinidad and Tobago and that there is a process by which a person has to undergo to become a citizen of Trinidad and Tobago.

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<sup>12</sup> This document was not part of the evidence in this case as the defendant did not put same into evidence.

<sup>13</sup> This document was not part of the evidence in this case as the defendant did not put same into evidence.

66. Hercules is an Immigration Officer IV in charge of the Investigation Unit located on Henry Street, Port of Spain. He has been an immigration officer for approximately fifteen years. Some of his evidence was the same as Harricoo's and so that evidence need not be repeated.
67. During cross-examination, Hercules testified that he was not present on the said date when the claimant was picked up outside of the prison by the immigration officers. Further during cross-examination, Hercules testified that he did not inform the claimant of his right to speak with a lawyer.
68. At the material time, Hercules was the Acting Immigration Officer IV at the IDC. On July 15, 2015 the claimant was brought to the IDC. Hercules testified that the claimant would have been interviewed by an immigration officer at the IDC. That the claimant was issued two sets of orange shirts and pants and then taken to the medical doctor.
69. Hercules testified that the claimant gave his name as Gerard Scott and advised that that was the name he gave at the prison. During the claimant's stay at the IDC, Hercules spoke to the claimant on at least four different occasions. According to Hercules, the claimant never revealed his true identity or nationality. The claimant also did not reveal to Hercules that he had a Trinidadian passport or Trinidad and Tobago ID card. Hercules testified that the claimant stated that he is from Dominica and St. Lucia but did not mention anything about Trinidad and Tobago.
70. According to Hercules, the food at the IDC is prepared through a caterer, Ms. De Fretias. De Fretias is attached to the school feeding programme. The Ministry of Health sends a government dietician to regulate meals and

the food is tasted everyday by Hercules, the manager or supervisor on shift before being given to the inmates.

71. The IDC has a twenty-four hour paramedic, Dr. Bissessar. Dr. Bissessar sees every person who enters the IDC and also anyone who has a medical problem. Hercules testified that the claimant would have had to request to see the doctor or medic. That the only compulsory medical is done upon first entry at the IDC. All other visits with the doctor or medic is done upon request by an inmate. As such, Hercules denied that the claimant was subjected to five different medical examinations.
72. During cross-examination, Hercules accepted that the claimant was given at least one hour of airing per day. He testified that to some degree the IDC was like a prison. He further accepted that there were a number of fights at the IDC during the period of the claimant's incarceration. Moreover, he accepted that that there was a serious fire at the IDC in either 2015 or 2016 and that an inmate was shot but he could not recall when same occurred. However, he did not accept that police had raided the cells at the IDC but did concede that armed guards were stationed outside the IDC when the detainees were in the yard airing
73. On December 1, 2015 Hercules interviewed the claimant. The claimant indicated to Hercules that he is known by four names, Gerard Scott, Gerard Chambers, Peter Davidson and Julien de la Bastide. As such, Hercules testified that it was quite difficult to identify the claimant. He further testified that it was during this interview, the claimant indicated that he had a sister named Margaret in Trinidad. As mentioned before, Immigration was unable to locate Margaret. During cross-examination, Hercules testified that during his interview with the claimant, he would

have made contemporaneous notes of what the claimant would have told him. However, those notes were not before the court.

74. Upon his release from the IDC, the claimant was given \$40.00 by an immigration officer and the claimant left the IDC.
75. During cross-examination, Hercules did not agree when it was put to him that a full investigation was not done into the citizenship status of the claimant.

**ISSUE 1** - *whether the claimant was informed of his right to an attorney*

76. The claimant testified that at no point in time on July 13, 2015 or during the subsequent days he spent at the IDC did the immigration officers advise him of his right to speak with a lawyer. During cross-examination, both witnesses for the defendant testified that they did not advise the claimant of his right to speak to a lawyer. Consequently, as there was no evidence to the contrary, the court finds that the claimant was not informed of his right to speak to an attorney.

**ISSUES 2 & 3** – the arrest and detention

**Law and analysis**

77. 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.<sup>14</sup> 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.<sup>15</sup>

78. 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.<sup>16</sup>

79. On July 13, 2015 an order of detention for the claimant's detention was made by an immigration officer pursuant to section 15 of the Immigration Act Chapter, 18:01.

80. Section 15 of the Immigration Act provides as follows;

*"15. Every police officer and every immigration officer may, without the issue of a warrant, order or direction for arrest or detention, arrest and detain for an inquiry or for deportation, any person who upon reasonable grounds is suspected of being a person referred to in section 9(4) or section 22(1)(i), and the Chief Immigration Officer may order the release of any such person."*

81. Section 9(4) (b) & (c) of the Immigration Act Chapter 18:01 provides as follows;

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<sup>14</sup> See *Alderson v Booth* (1969) 2 Q.B. 216

<sup>15</sup> *Jason Khan & Keron Williams v The Attorney General of Trinidad and Tobago*, CV2014-01187 para 15.

<sup>16</sup> *Halsbury's Laws of England Tort*, Volume 97 (2010) 5th Edition para 542.

*“(4) Where a permitted entrant is in the opinion of the Minister a person described in section 8(1)(k), (l), (m) or (n), or a person who-*

*(b) has been convicted of an offence and sentenced to a term of imprisonment for one or more years;*

*(c) has become an inmate of any prison or reformatory;*

*....*

*the Minister may at any time declare that such person has ceased to be a permitted entrant and such person shall thereupon cease to be a permitted entrant.”*

82. In ***Naidike v The Attorney General***<sup>17</sup> (a case relied upon by the claimant), Lord Brown had the following to say;

*“The arrest and detention claim*

*37 As has been seen, Dr Naidike was arrested and detained under section 15 of the Act. Mr Knox submits that in fact no such power of arrest and detention existed here. He advances two main arguments. First he submits that a ministerial declaration under section 9(4) of the Act was required before Dr Naidike was to be regarded for the purposes of section 15 (and, indeed, section 9(5)) as "a person referred to in section 9(4)"... Secondly, Mr Knox submits that in any event the section 15 power of arrest and detention is only exercisable in order to facilitate either the holding of an inquiry or a person's deportation pursuant to an existing deportation order...*

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<sup>17</sup> [2005] 1 AC 538



38 Mr Guthrie for the respondent contests both arguments. He submits, first, that no section 9(4) declaration is required: an immigrant is "a person referred to in section 9(4)" within the meaning of both section 9(5) and section 15 provided only that he falls within the description of one of the specified paragraphs of sections 8(1) or 9(4); secondly, that it is unnecessary for there to be a deportation order in existence for someone to be arrested and detained "for deportation" under section 15. Their Lordships will consider each submission in turn.

39 The arguments in favour of a declaration being required before someone is properly to be described as "a person referred to in section 9(4)" are in the Board's view compelling....

41 ... Section 9(4) expressly provides that it is the declaration itself which "thereupon" results in the person ceasing to be a permitted entrant. Mr Guthrie for his part is quite unable to explain why otherwise section 9(4) should provide for a declaration (which is required too by section 22(1)(f)—see para 8 above). Were the powers under sections 9(5) and 15 to be exercisable without such a declaration, indeed, there would be no point in ever making one.

These considerations aside, section 9(4) must be construed as it reads, namely as a single sentence by which a permitted entrant who "in the opinion of the minister" is either "described in section 8(1)(k), (l), (m) or (n)" or "a person who" falls within one of the paragraphs of section 9(4) itself may then, if the minister so decides, be declared to be no longer a permitted entrant. It would be wrong to classify as "a person referred to in section 9(4)" someone about whom the minister may have formed no opinion whatever or indeed someone whom the minister in his discretion

*has chosen not to deprive of his permitted entrant status notwithstanding that he falls within one of the specified categories.*

*Mr Guthrie's reliance upon the phrase in section 15, "who upon reasonable grounds is suspected", is misplaced. Those words are necessary to permit the arrest of someone against whom the arresting officer reasonably suspects there to be a section 9(4) ministerial declaration in force; they do not permit the officer to second guess both the minister's opinion as to whether the person concerned falls into one of the stipulated categories and also, assuming he does, the way in which the minister would choose to exercise his discretion..."*

83. Relying on **Naidike** supra, it is clear to this court that a section 9(4) declaration is the basis upon which an immigration officer may arrest and detain for an inquiry or for deportation any person pursuant to section 15 of the Immigration Act. During cross-examination Harricoo testified that there was no such declaration pursuant to section 9(4) of the Immigration Act. Consequently, it is clear to this court that the detention of the claimant was void ab initio. Further, the purpose of exercising the power to detain pursuant to section 15 is to hold an inquiry or for deportation. An inquiry is the commencement of deportation proceedings and the relevant process is set out in sections 21 to 27 of the Immigration Act and 25 of the Regulations.
  
84. According to the defendant's witness, Harricoo, no special inquiry was held because the claimant gave false information and was not identified. This evidence in the court's view simply does not accord with common sense as the detention order referred to the claimant by the name of "Gerard Scott". Also, the claimant's information listed his name as Gerard Scott and

his place and date of birth are Dominica and September 3, 1956 respectively. Also, the first recorded note on the claimant's file was that *"Mr. Gerard Scott was requested to contact someone to produce his Commonwealth of Dominica birth certificate and his passport. He was requested to have this done as quickly as possible in order to minimize his stay at IDC."* It is therefore clear to this court that the claimant was positively identified on July 13, 2015 and that a special inquiry could have been held at that point in time.

85. The second note on the claimant's information sheet which was dated July 29, 2015 indicated that the claimant gave a different name. The next note on the claimant's information sheet was made some four months thereafter on December 1, 2015. Quite an alarming occurrence. There was absolutely no evidence from the defendant giving any explanation why there existed such an inordinate passage of time during which nothing was done in relation to the claimant who was detained by the State.
  
86. The defendant submitted that the Immigration Division had reasonable and probable cause to detain the claimant and that the period of detention was justified because the claimant hid his true identity from the outset. That the Immigration Division awaited and depended solely on the claimant to give his true identity as he gave different names and different nationalities. According to the defendant, it was only on December 18, 2015 that the claimant informed the immigration officers that he had applied for a replacement of a Trinidad and Tobago ID card and after that information crystallized, the immigration officers had sufficient information to act. The defendant further submitted that the Immigration Division could have only processed the claimant pending the arrival or receipt of accurate information from the claimant.

87. The defendant made heavy weather of the fact that certain information was left out of the claimant's pleadings and that evidence such as he told the immigration officers that he had a Trinidad and Tobago passport was only given during cross-examination.
88. Further, much ado was made of the fact that the claimant did not provide any documentary evidence to prove that he is a citizen of Trinidad and Tobago. According to the defendant, one could infer that the claimant did not really want to be released or that he must have been hiding from someone after he spent his sentence in the prison, so that he failed to provide the Immigration Division with valuable information from the outset and provided same when he felt it safe for him to be released after disguising himself.
89. The court agrees with the submission of the claimant that it can neither be a justification nor mitigation for the claimant's arrest and lengthy detention that he did not help those who detained him. That the arrest and detention being agreed, it is now for the defendant to show that it had due authority to do so. Further, as seen in *Naidiki* supra the words "*who upon reasonable grounds is suspected*" in section 15 of the Immigration Act are necessary to permit the arrest of someone against whom the arresting officer reasonably suspects there to be a section 9(4) ministerial declaration in force, they do not permit the officer to second guess both the minister's opinion as to whether the person concerned falls into one of the stipulated categories and also, assuming he does, the way in which the minister would choose to exercise his discretion.
90. Additionally, whether the claimant is a citizen of Trinidad, Dominica or St. Lucia is immaterial to the legality of his arrest and detention in the

circumstances where no declaration pursuant to Section 9(4) has been made.

91. Moreover, to find that the claimant did not really want to be released or that he must have been hiding from someone after he spent his sentence in the prison would be an exercise in speculation on the part of the court not to mention that in the absence of any evidence in support the contention seems downright implausible and borders on the ridiculous.
92. The court therefore finds that there was in fact an unlawful detention or arrest of the claimant.

**ISSUE 4** - *whether the claimant's detention violated his constitutional rights enshrined under sections 4(a), 4(b), 4(c), 4(d), 4(g), 4(i), 5(2)(a), 5(2)(c), 5(2)(e) and 5(2)(h) of the Constitution*

93. The claimant conceded that his claims in relation to the rights set out in sections 4(c), 4(d), 4(i), 5(2)(a) of the Constitution are no longer necessary in light of the clear evidence which emerged during the course of the trial. The claimant also conceded that any claims which may arise out of section 5 of the Constitution would be likely extinguished by the regrettable effects of the savings clauses at section 6 of the Constitution. Without deciding the issues or commenting on those submissions the court simply accepts that the concession means that the claimant is no longer pursuing those declarations and has abandoned the consequent relief.
94. The defendant submitted that the claimant is not entitled to a declaration and/or damages for any alleged violation of his constitutional rights and that it is an abuse of process. In so submitting the defendant relied on the

authority of **Antonio Webster v the Attorney General of Trinidad and Tobago**.<sup>18</sup>

### **Law and Analysis**

95. Section 4(a) of the Constitution guarantees every individual the fundamental right to liberty and the right not to be deprived thereof except by due process of law.<sup>19</sup>
96. Section 4(b) of the Constitution provides the right of the individual to equality before the law and protection of the law. Equality before the law means the equal subjection of all classes to the law of the land. According to the case of **Annissa Webster and Ors. v The Attorney General of Trinidad and Tobago**<sup>20</sup>, in order to prove that there was inequality of treatment an applicant for constitutional relief must show that he was similarly circumstanced to other persons but was treated differently. Similarity of circumstances does not mean that there should be no differences between relevant comparators. It will be sufficient that there are no material differences.
97. Protection of the law means “...that persons are entitled to have recourse to the appropriate court or tribunal prescribed by law for the purpose of enforcing or defending their rights against others or resolving disputes of one kind or another. It is axiomatic that such a right is meaningless without

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<sup>18</sup> [2011] UKPC 22

<sup>19</sup> See *Lassalle v the Attorney General* (1971) 18 WIR 379, *Dilip Kowlessar v The Attorney General* H.C.A. No. S-350 of 1997, *Mark Jones v Noor Kenney Mohammed* H.C.A No. 191 of 1998. Phillips JA in *Lassalle* supra at 391 defined due process of law as “the antithesis of arbitrary infringement of the individual's right to personal liberty...”

<sup>20</sup> C.A.CIV.86/2008

*a decision by the court or tribunal to which the claim or dispute is referred for adjudication...*<sup>21</sup>

98. Section 4(c) of the Constitution provides for respect of an individual's private and family life. Section 4(d) of the Constitution provides for the right of an individual to equality of treatment from any public authority in the exercise of any functions.

99. Section 4(g) of the Constitution provides for freedom of movement. In the case of **Ferguson and Galbaransingh v the Attorney General of Trinidad and Tobago**<sup>22</sup>, Kangaloo JA at paragraph 59 stated the following in relation to this right as follows:

*“The right to freedom of movement set out in section 4(g) of the Constitution can be regarded as an essential component of the wider concept of liberty of man. To my mind it clearly includes the right to travel within, reside in and leave Trinidad and Tobago.”*

100. Section 4(i) of the Constitution provides for the freedom of thought and expression.

101. Sections 5(2)(c), 5(2)(e) and 5(2)(h) of the Constitution provides as follows;

*“(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—*

*(c) deprive a person who has been arrested or detained—*

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<sup>21</sup> See *Boodhoo (Jerome) and Khemkaran Jagram v Attorney-General* (2004) 64 WIR 370 at 374.

<sup>22</sup> Civil Appeal 2010-185

*(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;*

*(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;*

*(iii) of the right to be brought promptly before an appropriate judicial authority;*

*(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;*

*(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;*

*(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.”*

102. The court having found that the detention of the claimant from July 13, 2015 to December 21, 2015 was unlawful, it is axiomatic that the detention was in contravention of his right to liberty and the right not to be deprived thereof except by due process of law. Further, the fact that the claimant's right not to be deprived of his liberty without due process of law was breached meant that the claimant was not afforded the protection of the law and freedom of movement. However, the claimant has failed to show this court how he was unequally treated. The claimant has advanced no comparators for a determination of whether his detention was a breach of his right to equality. As such, the claimant has failed to show that his right of equality was breached.



103. In relation to the claimant's claims in relation to sections 4(c), 4(d) and 4(i) of the Constitution, the court finds that there was no proper evidence before it to support any such claims and therefore the claims for relief pursuant to those sections are dismissed.
104. In relation to the claimant's claim to breaches under Sections 5(2)(a), 5(2)(c), 5(2)(e) and 5(2)(h) of the Constitution, the court finds that the claimant's detention and failure to be informed of his right to an attorney was in contravention of same.

#### **ISSUE 5** – Damages

105. The claimant claimed damages for the violations of his constitutional rights, wrongful arrest and false imprisonment as well as aggravated and exemplary damages.

#### **Damages for breach of constitutional rights**

106. In the case of **Odikagbue v the Chief Immigration Officer and another**,<sup>23</sup> Kokaram J had the following to say in relation to damages being awarded for breach of constitutional rights;

*“54. The court in its constitutional jurisdiction is concerned to uphold or vindicate the constitutional right which has been contravened. Having found a breach of Mr. Odikagbue's rights under the Constitution it does not automatically entitle him to damages. An order granting redress may include an order for assessment of damages or it may be confined to a declaration or a mandatory order. See Merrick v A.G of Trinidad and*

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<sup>23</sup> CV2016-02258

*Tobago (Civil Appeal No 146 of 2009) (5 February 2013, unreported) at [57]. The Court of Appeal in Attorney General v Mukesh Maharaj Civ. App. No. 67 of 2011 observed that the Court is well within its discretion to grant monetary compensation in instances it deems equitable to do so. If the Court finds that monetary compensation is the proper and just award, it can then award a single sum for damages. To the extent that a compensatory award is granted in respect of the breach of the right and as 'recompense for the inconvenience and distress suffered during the illegal detention' (per Maharaj v A.G of Trinidad and Tobago (No 2) [1978] 30 WIR 310), such an award is, in the widest sense, a vindication of the right.*

*55. In the circumstances of this case an award of damages is necessary and the Court should not simply stop at an award of damages. I am fortified by that view having regard to the recent decision of Sam Maharaj v The Prime Minister of Trinidad and Tobago [2016] UKPC 3 where the Privy Council observed that the Court should not shy away from making an award for damages under the Constitution even in the absence of evidence which may make the task difficult so long as there is some material that would justify the award.*

*56. In Quincy George v The Attorney General of Trinidad and Tobago CV 2011-03875, Justice Boodoosingh stated at paragraph 43 and 44 that: "Regarding damages for unconstitutional/unlawful detention, compensation is for loss of liberty with the attendant distress and inconvenience suffered during the period of unlawful imprisonment and loss of earnings – see Kowlessar v AG, Civil App. No 167 of 2005 per Kangaloo JA. As Lord Diplock stated in Maharaj (No.2) at pages 321-322: "Finally, their Lordships would say something about the measure of monetary compensation recoverable ...where the contravention of the*

*claimant's constitutional rights consists of deprivation of liberty otherwise that by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment (under which the damages recoverable are at large and would include damages for loss of reputation). It is a claim in public law for compensation for the deprivation of liberty alone. Such compensation would include (1) any loss of earnings consequent upon the imprisonment and (2) recompense for the inconvenience and distress suffered by the appellant during his incarceration."*[Emphasis mine.]

*44. In assessing these damages all the relevant factors in a case should be considered and approached "in the round", the most important factor being the length of detention/ imprisonment – Millete v McNicholls, Civ. App. No. 14 of 2000. The element of "distress and inconvenience" has been applied widely and includes not only the distress suffered by the mere fact of the unlawful deprivation but other aggravating factors such as the treatment, feelings and conditions endured during the period of incarceration."*

*57. In that case determined on 24th July 2014, for the breaches on constitutional rights the Learned Judge awarded the sum of \$20,000.00."*

107. The claimant was deprived of his liberty for approximately one hundred and fifty-nine days that is, from July 13, 2015 to December 21, 2015. This court has taken into account the following considerations in arriving at an award for damages for the violations of the claimant's constitutional rights. Firstly, the fact that although the claimant was positively identified on July 13, 2015, the Immigration division failed to conduct a special inquiry into the claimant which was one of the main purposes of detaining an individual under section 15 of the Immigration Act.

108. Secondly, the conditions which the claimant testified to enduring while in detention. The defendant's witness, Hercules for the most part accepted the claimant's evidence in relation to the conditions at the IDC. Hercules testified that to some degree the IDC was prison-like in nature. He accepted that the claimant was given at least one hour of airing per day and that there were a number of fights at the IDC during the period of the claimant's incarceration. He further accepted that there was a serious fire at the IDC in either 2015 or 2016 and that an inmate was shot but he could not recall when same occurred.
109. Thirdly, the fact that the claimant was not advised of his right to speak to a lawyer. Taking these considerations in the round, the court would award the sum of \$30,000.00 in damages for the violations of the claimant's constitutional rights.

#### General Damages

110. Damages in cases of 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.
  - iii. Deprivation of liberty- by reason of arrest, detention and/or imprisonment.<sup>24</sup>

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<sup>24</sup> See Thadeus Clement v the Attorney General of Trinidad and Tobago Civ. App. 95 of 2010 at paragraph 12, per Jamadar JA 120.

111. Further, in *Thaddeus Bernard v Quashie*,<sup>25</sup> 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 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.”*

112. The claimant was arrested on July 13, 2015 and taken to the Enforcement Unit of the Immigration Division in Port of Spain. He was thereafter taken to the IDC where he remained detained until December 21, 2015. During the period of his detention, he was given an orange uniform to wear and had restricted privileges such as one hour of airing per day and one phone call per week. He slept in a dormitory with thirty other persons. He gave evidence that during his period of detention, there were numerous fights at the IDC, a fire and at least one inmate was shot. He further gave evidence that on one occasion the IDC was locked down for over a week and he was given food through a hole in the cell door which was a very dehumanizing experience for him.

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<sup>25</sup> CA No 159 of 1992

113. The claimant submitted that an award in the sum of \$350,000.00 is just and reasonable. In so submitting, the claimant relied on the following authorities;

- i. **Dyer v The Attorney General of Trinidad and Tobago**,<sup>26</sup> Ventour J - the claimant was arrested and charged with indecent assault and motor vehicular infringements. On the same day, he was taken before the Magistrate Court in Point Fortin. Some 3 years later, the matters were determined at the Magistrate Court, ordering the claimant to imprisonment with hard labour and the payment of fines. He failed to pay the fines and was taken to the Golden Grove Prison to begin serving the sentence. One year later, he was released with good conduct. The claimant was again arrested one month later and taken before a magistrate with respect to another charge of wounding with intent to do grievous bodily harm. Warrants of commitment were issued with respect to the previous cases and he was re-arrested and imprisoned. The claimant was made to serve additional time in prison of 186 days. The claimant stated that at the Golden Grove Prison, he was locked up in the blue section dorm approximately 60 x 20 feet with approximately 60 people. They each had their own bed but all 60 persons had to share 3 toilets and 4 showers. He had no privacy which was distressing, humiliating and embarrassing. There were fights among the prisoners because of the cramped conditions and he was assaulted several times. The place was very smelly and filthy. For a period of 186 days unlawful detention Ventour J awarded damages for unlawful arrest and imprisonment in the sum of

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<sup>26</sup> CV.2007-02202 delivered on 10th November 2011.

\$250,000.00 inclusive of aggravated damages and interest at the rate of 6% per annum.

- ii. **Uric Merrick v The Attorney General of Trinidad and Tobago and Ors.**<sup>27</sup> Smith J.A. - the Appellant was imprisoned for twenty-nine days. The Court of Appeal noted that in shorter but comparable cases awards of \$150,000.00 to 280,000.00 would be appropriate.

114. The defendant did not make any submissions in relation to damages.

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

- i. **Ted Alexis v the Attorney General of Trinidad and Tobago.**<sup>28</sup> Kangaloo J - Cocaine was planted on a claimant and he was imprisoned for two and a half (2 ½) months until he was able to access bail and the charge remained pending for four (4) years. The Court awarded general damages in the sum of \$100,000.00 for unlawful arrest, false imprisonment and malicious prosecution, inclusive of aggravated damages and \$25,000.00 as exemplary damages to mark the court's disapproval of the officer's conduct. The court took account of the serious nature of the charge and the fact that evidence was planted on the claimant. Interest at the rate of 12% per annum from the date of filing to the date of judgment was also awarded on the general damages.

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<sup>27</sup> CA No. 146 of 2009

<sup>28</sup> No S-1555 of 2000, decision given on the 17th March, 2008

- ii. *Curtis Gabriel v Attorney General of Trinidad and Tobago*,<sup>29</sup>  
Rajkumar J - the claimant spent eighty-four (84) days in prison and was awarded \$125,000.00 for general damages which included an element for aggravation, and the sum of \$50,000.00 by way of exemplary damages.

116. Having regard to the evidence before the court, the awards in similar cases and the fact that there were breaches of the claimant's constitutional rights, the court finds that a just award for general damages, which sum includes an uplift for aggravation is the sum of \$250,000.00.

#### Exemplary damages

117. 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*<sup>30</sup> established that exemplary damages can be awarded in three types of cases namely;
- i. Cases of oppressive, arbitrary or unconstitutional action by servants of the Government;
  - ii. Cases where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and
  - iii. Cases in which exemplary damages are expressly authorized.
118. The court agrees with the submissions of the claimant that this is a suitable case for an award of exemplary damages. The actions of the Immigration Division in arresting the claimant without a section 9(4) declaration and

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<sup>29</sup> HCA S-1452 of 2003

<sup>30</sup> (1964) AC 1129



continuing his detention until December 21, 2015 under prison-like conditions were arbitrary, oppressive and unconstitutional. The court finds that in the circumstances of this case an award of \$30,000.00 in exemplary damages is reasonable.

### **DISPOSITION**

119. The order of the court is as follows;

- i. It is declared that the claimant's detention by the Immigration Division from July 13, 2015 to December 21, 2015 was in breach of the rights of the claimant guaranteed under sections 4 (a), 4(b), 4(g) 5(2)(a), 5(2)(c), 5(2)(e) and 5(2)(h) of the Constitution;
- ii. The claims for relief under Sections 4(c), 4(d) and 4(i) of the Constitution are dismissed.
- iii. The defendant shall pay to the claimant compensation for breach of his constitutional rights in the sum of \$30,000.00.
- iv. The defendant shall pay to the claimant general damages for wrongful arrest and false imprisonment inclusive of aggravated damages in the sum of \$250,000.00.
- v. The Defendant shall pay the Claimant \$30,000.00 in exemplary damages; and
- vi. The defendant shall pay to the claimant the prescribed costs of the claim.

Ricky Rahim

Judge