

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007-04155

BETWEEN

STEVE SINGH

Claimant

AND

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Ms. C. Bharath holding for Mr. Anand Ramlogan for the Claimant

Ms. Alicia Baksh for the Attorney General

Reasons for decision

Facts

1. The claimant alleges that he was falsely imprisoned for approximately 17 hours and assaulted at the Gasparillo Police station .The result of the assault is set out in the Medical Report of Dr. M. Ashraph dated March 05, 2008 as follows:

“This 37 year old male with history of being assaulted was seen on May 24, 2007 with pain in left ear.

Examination revealed perforated left tympanic membrane and soft tissue injury to head and neck.

Patient was treated with antibiotics/analgesics and ear care. He was seen on May 31, 2007 in our clinic where tympanic membrane perforation was noted.

Patient has since defaulted from Clinic.”

2. He filed a claim for the following reliefs as set out in his claim form:
 1. Damages including damages and/or aggravated damages for false imprisonment;
 2. A declaration that the arrest and detention of the said Claimant is unconstitutional and illegal;
 3. A declaration that the refusal and/or omission of the Police to inform the Claimant upon arrest and/or detention of his right to retain or instruct without delay a legal advisor of his choice and to hold communication with them (sic) was unconstitutional;
 4. A declaration that the claimant was deprived of the constitutional right to be informed of his right to communicate with, instruct and retain an attorney at law of their (sic) choice contrary to section 5 of the Trinidad and Tobago Constitution.

The initial consent order:

3. With respect to the first relief he entered into a compromise with the defendant as a result of which the following consent order was entered:

By consent

Judgment for the Claimant in his claim for false imprisonment in the sum of \$50,000.00 with interest at the rate of 8% from the date of the appearance 28th November 2007 to judgment and 12% thereafter.

Issue

3. It was understood that this order was in partial settlement of the claimant's claim and did not prevent him from seeking to persuade the court that he was entitled to further relief and compensation. The issue was therefore whether the claimant was entitled to an award of further damages in excess of those agreed to.

The defendant contends in effect as follows:

(i) that the claimant was not entitled to seek constitutional relief as he initiated a private law action by claim form, in which he sought constitutional relief, instead of seeking such constitutional relief in an action for an administration order commenced by fixed date claim form, [“the procedural point”]

(ii) the claimant did not seek damages for breach of constitutional rights,

(iii) in any event, even if he were entitled to seek constitutional relief in a private law action, he had already been adequately compensated by the quantum paid under the consent order in that damages, paid thereunder for false imprisonment, were sufficient to include any element of compensatory and vindicatory damages for breach of constitutional rights, inclusive of any element of aggravation.

The procedural point

4. I find that the claimant is not precluded from seeking constitutional relief as well as private law relief in the same action, even if is commenced by claim form. The decision in **Antonio Webster v The Attorney General of Trinidad and Tobago C.A. Civ 113/2009** cited by the State, has been delivered by the Court of Appeal and apart from being bound by it, I entirely agree with it.

Principles

5. **Alphie Subiah v The Attorney General of Trinidad and Tobago Privy Council Appeal No. 39 of 2007** at paragraph 11

The Board's decisions in Ramanoop, paras 17-20, and Merson, para 18, leave no room for doubt on a number of points central to the resolution of cases such as the present. The Constitution is of (literally) fundamental importance in states such as Trinidad and Tobago and (in Merson's case), the Bahamas. Those who suffer violations of their constitutional rights may apply to the court for redress, the jurisdiction to grant which is an essential element in the protection intended to be afforded by the Constitution against the misuse of power by the state or its agents. Such redress may, in some cases, be afforded by public judicial recognition of the constitutional right and its violation. But ordinarily, and certainly in cases such as the present (and those of Ramanoop, and Merson, and other cases cited), constitutional redress will include an award of damages to compensate the victim. Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable (contrary to the practice commended by the Court of Appeal of England and Wales for directing juries in Thompson v Commissioner of Police of the Metropolis [1998] QB 498, 516 D-E) for the allowance for aggravated damages to be separately identified. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that

sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question to the extent that this is not already reflected in the compensatory award. As emphasised in Merson, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression.

6. In the **Tamara Merson v Drexel Cartwright and Ag (Bahamas) Privy Council Appeal No. 61 of 2003** “In some cases, a suitable declaration may suffice to vindicate the right” which has been breached.

The Judicial Committee stated at paragraph 18:

“These principles apply, in their Lordships’ opinion, to claims for constitutional redress under the comparable provisions of the Bahamian constitution. If the case is one for an award of damages by way of constitutional redress – and their Lordships would repeat that “constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course” (para 25 in Ramanoop) – the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the

right; in other cases an award of damages, including substantial damages, may seem to be necessary.”

7. In the case of **The Attorney General of Trinidad and Tobago v. Siewchand Ramanoop [2005] UK PC 15** in the judgment of the Judicial Committee delivered on the 23rd March, 2005 it was held that a monetary award under section 14 was not confined to an award of compensatory damages in the traditional sense. Paragraphs 18 to 19 of that judgment are set out in full:

The Attorney General v Siewchand Ramanoop Privy Council Appeal No. 13 of 2004, paragraphs 18 and 19

When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. “Redress” in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an

award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions “punitive damages” or “exemplary damages” are better avoided as descriptions of this type of additional award.

8. The following principles can be derived therefrom –

- 1. Though a declaration by the court will articulate the fact of the violation, in most cases more will be required than words.*
- 2. If the person wronged has suffered damage, the court may award him compensation.*
- 3. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation.*
- 4. This measure is no more than a guide because the award of compensation under section 14 is discretionary.*
- 5. The violation of the constitutional right will not always be co-terminous with the cause of action at law.*
- 6. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.*

Damages for the claimant’s detention - compensatory aspect and matters in aggravation

9. I have considered the defendant’s submission as follows-

The Claimant was falsely imprisoned for a period of 17 hours. Updated awards for comparable periods of false imprisonment are in the approximate range of \$23,000.00 to \$40,000.00 which is considerably lower than the general damages agreed for false imprisonment in this case. As such he has already been adequately compensated.

With respect to the defendant's submission that the claimant has already received adequate compensation, I have reviewed the authorities and the applicable range of awards submitted by the Defendant as follows:

- (a) **Joseph Benjamin v AG, HCA 1305/74** delivered 26th August 1975 per Cross, Ulric J

For a period of 17 hours detention the award for general damages, as *updated* was approximately \$23,000.00.

- (b) **Alphonsus Mondesir v AG, HCA 1903/97** delivered 15th May 1998 per Sinanan, Ivory J

The Plaintiff was awarded the sum of \$25,000.00 in May 1998 for 17 ¹/₂ hours detention. This figure as *updated* is approximately \$39,199.90. In this case the allegation of assault was not established.

- (c) **Alphie Subiah v The Attorney General of Trinidad and Tobago Privy Council Appeal No. 39 of 2007** at paragraph 13

The Court of Appeal unanimously concluded that on a purely compensatory basis the appellant was entitled to \$45,000. The Board is inclined to wonder, given the passage of time and changes in the value of money since some of the earlier precedents relied on, whether the level of compensatory damages may call for upwards revision by the courts of Trinidad and Tobago. But the Board has always deferred to the superior knowledge and experience of local courts in assessing levels of damages (see, recently, Brown v Robinson and Sentry Security Service Co Ltd [2004] UKPC 56, para 16), and it is not persuaded that the Court of Appeal's assessment of \$45,000 is vitiated by such manifest error as would justify the Board in intervening. Giving, however, a broader reading than the Court of Appeal did to the Master's overall award, the Board cannot accept that the Court of Appeal majority was entitled, on familiar principles, to reduce that award by \$10,000. The quantum of a vindicatory addition to compensatory

(including aggravated) damages cannot be calculated with scientific accuracy, and the difference in this case did not warrant interference by an appellate court.

10. If matters in aggravation are taken into account I would have been prepared to uplift a basic award of \$35,000.00 for detention simpliciter by a further \$7,500.00. I consider that the sum of \$50,000.00 agreed already reflects suitable amounts for:

- (a) Detention.
- (b) Matters in aggravation.
- (c) Breaches of Constitutional Rights.

11. Having considered all the authorities in particular the case of **Alphie Subiah v the Attorney General, Appeal No. 39 of 2007**, I am of the view that an award of damages including an element of vindicatory damages, taking into account circumstances of aggravation would fall into the range of \$50,000.00 to \$80,000.00. The amount already agreed would fall into the lower end of this range.

In **Subiah** the Privy Council accepted that the award of \$45,000.00 in damages on a compensatory basis was low but not so low that they would interfere with it, that the Masters award of \$80,000.00 including an element for vindicatory damages was appropriate in the circumstances of **Subiah**, and that exemplary damages were rightly not awarded.

The circumstances of this case in terms of impact upon the Claimant are similar though this claim also included an allegation of assault.

12. I accept however, the submission of the defendant that the claimant did not seek anything other than declaratory relief. He did not expressly seek damages in his claim form. In those circumstances I would not be inclined to supplement the claimant's case to

include an express claim for damages for breach of constitutional right when he has already been compensated in damages for false imprisonment and in circumstances where the court is prepared to and does grant constitutional declarations.

Declaratory Constitutional Relief

13. I grant the constitutional declarations sought, namely:

(a) a declaration that the arrest and the attention of the claimant is unconstitutional and illegal,

(b) a declaration that the refusal and detention of the police to inform the claimant upon arrest and/or detention of his right to retain or instruct without delay a legal advisor of his choice, and to hold communication with him was unconstitutional, and

(c) a declaration that the claimant was deprived of the constitutional right to be informed of his right to communicate with, instruct and retain an attorney at law of his choice contrary to section 5 of the Constitution.

Damages for breach of constitutional rights – Amount awardable if pleaded.

14. I take into account that the breach of the rights to instruct legal advisor and to be informed of the right to legal advisor would have been an aggravating factor of the wrongful imprisonment. It will be necessary to consider whether he has already been adequately compensated for his wrongful imprisonment to the extent necessary to include recognition of this aggravating factor, recognizing that it is also a constitutional violation.

15. a. In this case where a claim for damages for breach of constitutional rights was not pleaded I find that, in any event, the case for a claim for additional constitutional damages has not been made.

b. Even if it had, I find that the claim for damages for breach of the constitutional rights:

- (i) to an attorney, and
- (ii) to be informed of the right to an attorney,

would, in a case like this where there is also a claim for false imprisonment, be subsumed in any award for damages for false imprisonment.

I accept the dicta to this effect by the Honourable Chief Justice De La Bastide (as he then was in **Marcel Honore v The Attorney General and the Commissioner of Police Civil Appeal No. 20 of 1995**, to the effect that breach of constitutional right to be informed of a right to a legal adviser was subsumed in the claim for false imprisonment: *“the lesser sin was lost in the bigger one... (and)...the failure to advise him of this right was of little or no significance in the context of the detention which was itself wrongful”*.

- c. I do not find this to be a case for vindictory damages in the context of
- (i) Adequate compensation already being paid for the detention, inclusive of matters of aggravation,
 - (ii) The declarations being granted.

In any event vindictory damages if awardable at all would not have exceeded \$7,500 - \$10,000.00 in the circumstances of this case.

d. Further I find that even if it had not been completely so subsumed in view of the overlap with the detention for which compensation is being awarded and the declarations granted in respect of constitutional violation, if such damages for constitutional breach were to be separately awarded I would have been prepared to make a further award of no more than \$7,500.00 - \$10,000 I take into account the very real overlap between the detention and the matters aggravating that detention –the breach of constitutional rights.

16. I take into account the fact that the Claimant has not sought damages for the constitutional breaches in considering whether declarations of constitutional breaches would suffice in the present case.

The final award

17. I decline to make any further award of damages in circumstances where –

- a) Constitutional relief in the form of the above declarations is granted,
- b) No claim for damages for constitutional breach is made,
- c) Where damages have already been paid for the private law aspect of this claim and,
- d) Where I find those damages fall within the range, even the lower range, of an award for damages which would have included matters of aggravation and damages for constitutional breach including compensatory and vindicatory damages.

Dated this 30th day of April 2010

.....

Peter A. Rajkumar

Judge