

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No.3243 of 2004

CV 2009-00988

Between

DAVE LEON MOORE

Claimant

And

DEXTER LEWIS #12925

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendants

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Ravi Heffes Doon instructed by N.D. Alfonso & Co. for the Claimant

Karen Boodan and Rennie Singh for the Defendant

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JUDGMENT

Background

1. The claimant claims damages for assault and battery arising out of an incident which occurred on the 30th November 2000 at the Oriental Recreation Club in Sangre Grande, (the club), , when Police Constable Dexter Lewis, who purported to be performing his duties as a police officer, arrested the claimant allegedly for the use of obscene language.

2. The claimant claims that on that date he met the defendant at the club and accused him of impropriety in attempting to implicate his step son in a criminal offence. The claimant was asked to leave the club as he was shouting and abusing the first defendant. He left as requested, or required.

3. The claimant claims that on leaving the club he was attacked by the defendant from behind. They both fell to the ground and the defendant proceeded to pull him by his legs down the flight of stairs. The plaintiff claimed in his statement of claim that his neck and head hit every treader of the said staircase .In cross examination however he admitted that he was conscious during the time he was dragged down at least two stairs but only “caught himself “at the bottom of the stairs.

4. He suffered severe Injuries as described in the medical reports.

- Fracture of cervical vertebral body at C3 level
- Fracture and displacement of vertebral body at C6 level
- Spinal cord oedema
- Post traumatic cord myelomalasia
- Spinal cord compression

5. Though the claimant has now improved with physiotherapy he remains severely disabled by his injuries.

6. He alleged that the first defendant employed greater force than was necessary in the circumstances, which was not reasonably commensurate with and/or was disproportionate and/or grossly disproportionate to any threat posed by the claimant and such force was not used in defence of any threatened or attempted assault by the claimant but by way of retaliation.

7. The Defendant's defence was that he had to struggle with the drunk, abusive claimant who tried to assault him, and in defending himself he used no more force than was reasonably necessary to subdue the claimant. It was the claimant who intended to and humiliated the first defendant and verbally abused and attacked him. The claimant was charged with using obscene language to the annoyance of others.

Issues

8. Whether the first named defendant used excessive force, or alternatively whether he used reasonable force, in the exercise of his duty or in self defence ?

Findings

9. I find that the claimant had been asked to leave the club after his outburst there, and he did leave. He left first. The first defendant followed him. He met the claimant on the stairs. At that point the claimant was not using any obscene language on the stairway. He was on his way out of the club. To meet the claimant on the stairs, the first defendant clearly had to have followed the claimant with some haste. He had to have intended to accost the claimant. His claim that it was the claimant who followed him, the first defendant, is unsustainable in light of the evidence of Bertie Phillips and it is not accepted.

10. The first defendant was, in his own words, “*embarrassed and annoyed*” after the incident in the club. He was clearly attempting to abuse his authority as a police officer, by following the claimant and attempting to drag the claimant off to jail. I accept the evidence that he told the claimant “*you lock up today*”

11. The first named defendant used excessive force in applying the headlock to the claimant. It was entirely unnecessary. The claimant was not doing anything at that point to require restraint. I find that the assertion that the claimant was attacking the first defendant and that he was therefore put in fear for his safety is untrue.

12. I find as follows

a. There was an incident within the club, words were exchanged and the claimant was asked to leave.

b. The claimant had had at least 2 drinks before he entered the club, (a Guinness and a drink of puncheon rum. – as he admitted at the magistrate’s court in sworn testimony)

c. He did leave as requested by the owner of the club.

d. The first defendant followed the claimant and accosted him on the staircase.

e. The claimant was not the one who accosted the first named defendant, and the claimant did not attempt to attack the first named defendant in the vicinity of the staircase as alleged.

f. The first defendant held on to the claimant in the vicinity of the staircase and tried to subdue or restrain him.

g. He did this by placing the claimant in a headlock and by applying violent force in pulling the claimant by the neck away from the rail. As a result of this the claimant sustained the injuries to his neck from which he still suffers today.

h. The claimant was not pulled by the legs with his head hitting every treader on the staircase. (He did not maintain this version at trial, but explained that after his head hit the first two steps he was losing consciousness and did not remember if his head hit other steps.)

Conclusion

13. I find that the claimant's claim for damages for assault has been proved on a balance of probabilities.

I am satisfied that the claimant's capacity to earn a living and his future earnings have been significantly impaired.

I am satisfied that he has lost earnings and will continue to do so as a result of the continuing effects of the injuries inflicted by the first named claimant.

I am satisfied that that element of lost earnings by itself, exclusive of interest, together with loss of future earnings, exceeds the sum of **\$300,000.00** at this point.

14. I am satisfied that the defendant's actions were performed while he clothed himself with the authority of the State as a police officer in showing his police identification, in allegedly attempting to arrest the claimant, requesting assistance from a special reserve police officer, and in pursuing a criminal charge against the claimant. Though his actions were motivated by anger and a desire for revenge, to satisfy his own ends, the second named defendant is vicariously liable for those actions. See **Clinton Bernard v Attorney General** [Privy Council Appeal 30 of 2003 – delivered 7th October 2004]

Disposition

15. It is ordered that there be judgment for the claimant for damages for assault and battery to be assessed by this court in default of agreement.

16. It is further ordered that in the interim the second defendant do pay by way of interim payment the sum of **\$250,000.00 pending the final assessment of damages.**

Analysis and Reasoning

Law

17. The scenarios presented by the Claimant and the Defendant are diametrically opposed, and the testimony of each witness must therefore be carefully assessed.

18. I note and adopt the approach in the case of **Reid v. Charles P.C. Appeal No. 86 from the Court of Appeal of Trinidad and Tobago dated 13th July, 1989 at page 6** where it was stated:

*“.....However, in such a situation, where the **wrong impression** can be gained by the most experienced of judges if he relies **solely** on the **demeanour of witnesses**, it is important for him to **check that impression** against **contemporary documents**, where they exist, **against the pleaded case and against the inherent probability or improbability of the rival contentions**, in the light of the particular facts and matters **which are common ground or unchallenged**, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard witnesses.”*

Law - Self-defence

19.

1. **Clerk & Lindsell on Torts, 20th Edition, Paragraphs 30 – 02 to 30 - 03, pages 2017-2018** are set out hereunder.

*It is lawful for one person to use force towards another in the defence of his own person , but **this force must not transgress the reasonable limits of the occasion** , what is reasonable force being a question of fact in each case. But **the law does not require** that a person when laboring under a natural feeling of resentment consequent on gross provocation **should very nicely measure the weight of his blows**.*

*In **Ashley v Chief Constable of Sussex Police** ([2008] UKHL 25) the House of Lords clarified two important differences between self-defence in criminal law and self-defence to claims for the tort of trespass to the person. First, in contrast to criminal law, **the burden of proof with regard to self-defence in civil law is on the defendant**. Secondly, in criminal law an honest but mistaken belief – even if unreasonable – that it is necessary to defend oneself is a defence to a criminal assault. **In contrast, in civil law the***

defendant must show that, where he is being attacked or in imminent danger of attack, he honestly and reasonably believed that it was necessary to defend himself (as well as that the force used was reasonable in all the circumstances). Indeed, the majority of their Lordship left open whether there is any defence of self defence at all in civil law where the defendant cannot show that there was actually an attack or an imminent danger of attack. In other words, it may be irrelevant that the defendant mistakenly and reasonably believed that there an actual or imminent attack: what may be needed is proof that there was in fact an attack or imminent attack.

2. *In Ashley v Chief Constable of Sussex Police [2008] UKHL 25* the 3 possible tests were set out as follows and analysed by their Lordships in their several judgments,(in particular at paragraphs 3,16,18,20,44,50-55,76, 85,86, 91.)

Issue 1. The self-defence criteria

16. *In para 37 of his judgment the Master of the Rolls identified three possible approaches to the criteria requisite for a successful plea of self-defence, namely, (1) the necessity to take action in response to an attack, or imminent attack, must be judged on the assumption that the facts were as the defendant honestly believed them to be, whether or not he was mistaken and, if he made a mistake of fact, whether or not it was reasonable for him to have done so (solution 1); (2) **the necessity to take action in response to an attack or imminent attack must be judged on the facts as the defendant honestly believed them to be, whether or not he was mistaken, but, if he made a mistake of fact, he can rely on that fact only if the mistake was a reasonable one for him to have made (solution 2); (3) in order to establish the relevant necessity the defendant must establish that there was in fact an imminent and real risk of attack (solution 3).** It was common ground that, in addition, based on whatever belief the defendant is entitled to rely on, **the defendant must, in a civil action, satisfy the court that it was reasonable for him to have taken the action he did.** Of the three solutions the Court of Appeal held that solution 2 was the correct one. On this appeal the Chief Constable has contended, as he did below, that solution 1 is the correct one. The respondents have not cross-appealed in order to contend that solution 3 should be preferred.*

Though solution 2 was accepted as there was no argument heard on solution 3, some of their Lordships clearly preferred solution 3.

The Evidence

Dave Leon Moore's Evidence

20.

The moment I spotted the first defendant I could think of nothing else but the distress he had caused to Kevin and my family. Kevin was never charged with any criminal offence arising out of this incident. I was angry and without thinking I shouted across the whappie room: - "look stinking Milk. Boy you is a dirty dog, you try to set up my son"

*The first defendant approached me and told me to shut up and that I couldn't do him anything. The first defendant told me that if I didn't keep quiet he would lock me up. The first defendant traded some angry words and I told him I would not shut up as he was a dirty corrupt police officer and everyone should know that. I also told him I could say what I wanted since I was in a licenced establishment and as long as I did not curse him. The first defendant told me that I could tell him what I wanted if we went downstairs. The first defendant and I were **shouting** at each other and the proprietor of the club, Mervyn Johnston, whom is known to me as Patam ordered me to leave the club and to stop causing trouble.*

***I did leave** upon Patam's request and I proceeded to walk out of the front entrance of the Club and along a corridor which led to the staircase to the ground floor. Someone grabbed me **from behind as I was walking**. I was placed in a "headlock". It was the first Defendant who was holding onto me. I knew this when he spoke to me and told me "say everything you have to say now".*

*I begun to struggle to free myself but was having difficulty breathing and the first defendant's hold was making me dizzy and lightheaded. By this time we had reached **the top of the staircase** and the first defendant was pulling me down the stairs. At some point he pushed me down and **held me by feet** and started pulling me down the staircase. **My head hit the treaders of the stairs** and I became semi-unconscious. I next remember the first defendant holding me in a "choker hold" and that **I was trying to hold onto the railing of the staircase**. I believe we were both standing on the middle landing of the staircase at this time. After this I don't recall much and I believe I lost consciousness all together.*

The next thing I remember is being at the bottom of the staircase and that the first Defendant was holding onto my shirt collar.

*The first defendant Kester and another man who I do not recall lifted me into the back seat of a car and I was transported to the Sangre Grande District Hospital. At this time I was in a daze and **unable to walk**.*

20. He claims in summary:-

- a. First defendant grabbed him from behind.
- b. First defendant placed him in a headlock.
- c. He began to struggle but was having difficulty breathing.
- d. By this time they had reached the top of the staircase and the first defendant was pulling him down the stairs.
- e. At some point the first defendant pushed him down and held him by the feet and started pulling him down the staircase. His head hit treaders of the stairs and he became semi conscious.
- f. He next remembered first defendant holding him in a choker hold and he was trying to hold onto the railing of the staircase. At that point they were both standing on the middle landing of the staircase.

Dexter Lewis' version of events

21.

The Claimant on entering the Club was only five feet away from me when he looked in my direction for about two minutes and then said in a loud voice "Milk you mother c..., I want to beat the mother c... bad" and other words to that effect. While he was getting on like that he was approaching me. The elderly men around me advised him to behave himself however he moved like he was going to hit me and he was pulled away by the other men.

*There were a fair amount of persons in the Club some of whom I knew personally **and I was embarrassed and annoyed** and I immediately called the Proprietor of the Club and I told him about the Claimant's behaviour as he seemed to me to be drunk. The Proprietor came and with the assistance of other persons tried to subdue the claimant. I decided to leave the Club however **as I was walking out the club the claimant followed me.** On the platform outside of the club **the claimant began cursing and threatened to beat me.** I showed the claimant my Trinidad and Tobago Police Identification Card and I told him to use better words.*

*At this time there were other people around who could see and hear us and I was annoyed. Thinking that he would stop this behaviour I told him that if he did not restrain himself I would arrest him for obscene language. He only said "I want you to lock me up you, f...er like you." **He then started to approach me as though he wanted to fight. He tried to cuff me** and I held his hands then told him that he was under arrest. A struggle then ensued. **I was very fearful** that I would be harmed as the platform was wet and slippery and either one of us could have fallen over the railings. **Some of the other patrons of the Club also joined in the struggle** and tried to pull him away from me. Eventually I managed to subdue him on the floor of the platform. **At no time did the claimant fall on the floor.** He was sitting on the platform with his back bracing the banister of the platform.*

*I realized that **the claimant had stopped moving and he could not walk or lift himself up.** Whilst he was on the platform I immediately cautioned him **however he was not talking** and I informed the Claimant that he was under arrest for using obscene language and resisting arrest.*

I realized that the claimant could not move, I tried to pull him up but he could not stand. One of the patrons of the club assisted me in taking the claimant downstairs. I held on to the upper part of the claimant's body and the other man held on to his legs. When we got downstairs I stopped a car that was just pulling out on the roadway and put the claimant inside in the back seat. I also sat in the back seat and the claimant's head was on my lap. I took him to the Sangre Grande Hospital.

22. There's a significant contradiction between the claimant's version of events and the defendant's. The claimant claims that he was attacked by the first defendant. Lewis claims that in fact the claimant attempted to attack him. The witness statements of each are diametrically opposed.

23. Lewis claims specifically that he decided to leave the club but as he was walking out of the club the claimant followed him. He claims that on the platform outside the club the claimant began cursing and threatening to beat him, He claims that he warned the claimant if he didn't restrain himself Lewis would arrest him for obscene language. He claims that the claimant responded with more obscene language and invited Lewis to lock him up.

24. Lewis claims that the claimant then started to approach him as though he wanted to fight. The claimant allegedly tried to cuff him and he held his hands and told him that he was under arrest. A struggle then ensued. Some of the other patrons of the club joined in the struggle and tried to pull him away from Lewis.

25. Lewis claims he eventually managed to subdue the claimant on the floor of the platform but at no time did the claimant fall on the floor. In so far as he states the claimant never fell on the floor his version provided no explanation as to how the claimant sustained the very serious injuries set out in the medical reports. X rays showed fracture of the C (or cervical) 3 vertebrae

and dislocation of the C6 vertebrae. Initially claimant was described as paraplegic though improvement has taken place to the point where he can now walk with a cane. He still suffers from weakness in his arms and legs and has a significant residual deficit.

26. Officer Dexter Lewis' aggressive demeanour even in the witness box suggested that his recital of a restrained and proportionate approach was an edited and sanitized version of what actually took place in the far more casual setting of the recreation club, where, it is common ground on everyone's account, illegal gambling was taking place and alcohol was being sold.

27. This version of events is not accepted in so far as he states that it was the claimant who followed him out of the club. It is directly contradicted by evidence of Bertie Philips whose evidence I accept as being objective and truthful.

Bertie Philips

28. Bertie Philips was careful to state what he saw as well as what he did not see. His version of events is set out at paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 of his witness statement as follows:-

1. *I do recall clearly an incident in which the Claimant herein was hurt on the Club's premises. I do not recall the exact date but I do know the incident occurred late in the year 2000. I recall that I was sitting in the corridor right outside the front entrance of the Club early one afternoon. I was alone and I was reading a newspaper. Suddenly, I heard people speaking in loud and angry tones. I could not hear all that was being said but I heard the Club's proprietor, whose name is Mervyn Johnston, also known to me as "Patam" saying loudly "Starsky behave nah boy". "Patam" voice is distinctive and is well known to me.*

2. *Shortly after I heard the proprietor shout “Starsky take your bag and leave”. There were other things being said but I could not hear these things clearly. The Claimant’s nickname is “Starsky” and the first Defendant’s nickname is “Milk”. Those are the names I and other persons in the Club would call them by.*
3. *Almost immediately after I heard Mervyn Johnston say “Starsky take your bag and leave” **the Claimant came out of the front entrance of the Club right next to where I was sitting and passed on the side of me and walked along the corridor leading to the staircase to go down to the ground level of the building.***
4. *While the Claimant was in the corridor I could see him clearly. He then turned in the direction of the said staircase and I was not able to see him.*
5. ***Right after the Claimant passed me and turned to go down the staircase and out of my eyesight, “Milk”, the first Defendant came out of the front entrance of the Club, walked down the corridor and also turned in the direction of the staircase and out of my eyesight.***
6. *I next heard the Claimant’s voice from the direction of the staircase. I could not make out what was being said by him but I clearly heard the first Defendant say “**you see you, you lock up today**”. The first Defendant’s voice was loud and he sounded angry.*
7. *I decided to leave my seat and to walk to the top of the staircase to see what was happening between the Claimant and the first Defendant. As I reached the top of the staircase I saw the first Defendant and the Claimant **on the middle landing** of same. **The first Defendant was “raffing” the Claimant by his neck and he had him (the Claimant) in a choker hold. I observed that the Claimant’s right hand and foot were tangled up in the staircase and the first Defendant was with some force trying to pull the Claimant free.***

8. *I called down to the first Defendant and said ‘Milk’ look the man hand and foot in the staircase don’t pull him so” or words to that effect. I thought that the Claimant’s arm and leg would be broken if the pulling and tugging continued much longer. **The first Defendant ignored me and he continued to simultaneously choke the Claimant and violently pull him away from the railing of the staircase. I noticed the Claimant’s body became limp and lifeless and his hand fell away from the railing of the staircase. The first Defendant was then able, still holding the Claimant in a choker hold, to pull the Claimant down the remaining stairs and to the ground.***

9. *The Claimant at this stage appeared to me to be **unconscious**, he was not resisting the first Defendant at all. As the first Defendant dragged the Claimant down the stairs **his lower body was hitting the treaders thereof.***

29. According to his version of events the claimant was the first to leave the club and it was Lewis who followed him.

30. He describes the staircase as out of his sight and he does not claim to have witnessed what if anything, took place between the top of those stairs and the middle landing. When he arrived he saw the defendant and claimant on the middle landing and the first defendant holding the claimant in a choker hold with the claimant’s right hand and foot being tangled up in the staircase.

31. He describes the first defendant’s actions as a simultaneous choking of the claimant’s neck and a violent pulling of the claimant away from the railing of the stair case. On his version the first defendant held the claimant and pulled the claimant down the remaining stairs to the ground. He does not describe other persons as being present and assisting in restraining the claimant.

32. Neither does he describe witnessing the claimant being held by the feet and pulled down the staircase. It should be noted however that Phillips did not observe what if anything took place between the top of the stairs and the middle landing.

33. Mr. Phillips was a 64 year old gentleman who was careful to state what he saw and what he did not. He was not connected to either party though he knew them both casually. He gave his evidence calmly and it was inherently credible and consistent with the medical evidence. I accept his evidence.

(In fact his evidence was even more consistent with the medical evidence than the claimant's evidence, though I draw no adverse inferences against the claimant based on that. He was in a highly traumatic situation and was semi conscious for part of the incident).

Dr. Adam

34. Dr. Adam's evidence as appears from his witness statement is as follows:-

My clinical examination of the Claimant showed a prominent spinous process at the C7 level of his cervical spine. I also observed an increased tone in the lower extremity with approximately T2 sensory level. This means in simple language that the Claimant has a loss of sensation below his upper chest level.

*The Claimant's symptoms at the time of my said examination were **stiffness of his neck, slow ambulation accompanied by leg spasms. The Claimant relied heavily on a cane for ambulation.***

*I tested the Claimant's upper body and lower body strength manually. I found that the Claimant had **weakness in both upper and lower extremities.** In his upper limbs I assessed the Claimant's strength as 4/5 (right side), 3/5 (left side) with increased weakness distally which means that the Claimant has a greater weakness in his forearm and hands than his upper arms. In the Claimant's legs I found 4/5 grade of power with*

his right leg being weaker than the left. Using this grade scale 0 indicates no power and 5 indicates full power.

*My diagnosis was C6 posterior displacement with cord edema and damage – myelomalacia. I assessed the Claimant as having spinal injuries with **significant residual deficit** arising therefrom. It is my professional opinion that he is **significantly disabled** as a consequence of the injuries sustained in November 2000. My assessment of the Claimant is that he is **disabled to the extent that he is unable to work.***

35. An extract of Dr Adam's explanation of his findings is set out to demonstrate the seriousness of the effects of the injuries sustained.

From the point of view, neurologic condition. There was an advantage to be gained from stability of the spine - to make the spine more stable, because he is always more susceptible to another injury without the surgery than with it.

Ct: *Apart from the fusion surgery, as things stand now there is nothing that could improve the neurological state, so you are satisfied that this claimant has weakness in his upper limb?*

A: *Yes.*

Ct: *And that makes it difficult for him to hold a job?*

A: *Yes. And his lower limbs as well. The weakness is in his upper and lower limbs.*

Ct: *Is there likely to be any improvement now going forward?*

A: *I don't think so, I think it is a fixed injury now, there was only marginal improvement from my two examinations which I think was 2 years apart, so I don't think that there will be any further improvement from that. We have MRI evidence that the spinal cord is damaged.*

Ct: *What level of trauma is required to cause the type of injury that you saw, whether from a fall or whether from being pulled down the stairs?*

A: *Whichever it is it has to be a severe level of trauma.*

Findings of fact

36. I find that the claimant had been asked to leave the club after his outburst there, and he did leave. He left first. The first defendant followed him. He met the claimant on the stairs. At that point the claimant was not using any obscene language on the stairway. He was on his way out of the club. To meet the claimant on the stairs, the first defendant clearly had to have followed the claimant with some haste. He had to have intended to accost the claimant. His claim that that it was the claimant who followed him, the first defendant, is unsustainable in light of the evidence of Bertie Phillips and it is not accepted.

37. The first defendant was, in his own words, “*embarrassed and annoyed*” after the incident in the club. He was clearly attempting to abuse his authority as a police officer, by following the claimant and attempting to drag the claimant off to jail. I accept the evidence that he told the claimant “*you lock up today*”

38. He used excessive force in applying the headlock to the claimant. In the first case it was unnecessary. The claimant was not doing anything at that point to require restraint. I find that the assertion that the claimant was attacking the first defendant and that he was therefore put in fear for his safety is untrue.

39. **I find as follows**

- a. There was an incident within the club, words were exchanged and the claimant was asked to leave.
- b. The claimant had had at least 2 drinks before he entered the club, (a Guinness and a drink of puncheon rum. – as he admitted at the magistrate’s court in sworn testimony).
- c. He did leave as requested by the owner of the club.
- d. The first defendant followed the claimant and accosted him on the staircase.
- e. The first defendant held on to the claimant and tried to subdue him.

- f. He did this by placing the claimant in a headlock and by applying violent force in pulling the claimant by the neck away from the rail. As a result of this the claimant sustained the injuries to his neck from which he still suffers today.
- g. The claimant was not pulled by the legs with his head hitting every treader on the staircase. (He did not maintain this version at trial but explained that after his head hit the first two steps he was losing consciousness and did not remember if his head hit other steps.)

40. I find it makes no difference whether or not, additional to the force applied to the claimant's head, and the claimant was also pulled down a flight of steps with his head hitting the steps. The fact that an extreme level of trauma was required to produce the injuries sustained is confirmed by Dr. Adam. The description by Phillips sufficiently describes disproportionate and excessive force in circumstances -

- a. Where the claimant was not violent and was not attempting to assault or attack or batter the first defendant.
- b. Where the claimant was leaving the scene and the incident in the club was effectively at an end.
- c. Where the claimant was held from behind. He could not have been threatening, assaulting or using obscene language at that time as described by the first defendant.
- d. No force was required to subdue the claimant and any force applied to him, and in particular the excessive force applied to his neck, was excessive and disproportionate in all the circumstances.

41. The claimant suffered for a long period of paralysis, incontinence, and weakness, directly caused by the injuries inflicted by the first defendant and the claimant's health, livelihood and future prospects were destroyed as a result of that attack.

42. The pursuit of the charge that the claimant used obscene language appears to have been an attempt to justify reprehensible conduct on the part of the first defendant. The claimant admits that he was making a scene in the club before he was asked to leave. He denies being intoxicated or using obscene language. He admitted in the magistrate's court proceedings that he had had 2 drinks of alcohol. Clearly it reduced any inhibitions he might have had about confronting the first defendant about allegedly trying to frame his son on a criminal charge.

43. Even if he had used obscene language in the incident inside the club the penalty for use of obscene language cannot be the infliction of extreme trauma, breaking the claimant's neck, and effectively destroying the claimant's life and means of livelihood, under the guise of trying to subdue and arrest him. It is noteworthy that the claimant was not charged with assault or resisting arrest which is remarkable given the first defendant's version of what transpired.

Conclusion

44. I find that the claimant's claim for damages for assault has been proved on a balance of probabilities.

I am satisfied that the claimant's capacity to earn a living and his future earnings have been significantly impaired.

I am satisfied that he has lost earnings and will continue to do so as a result of the continuing effects of the injuries inflicted by the first named claimant.

I am satisfied that that element of lost earnings by itself, exclusive of interest, together with loss of future earnings exceeds the sum of \$300,000.00 at this point.

I am satisfied that the defendant's actions were performed while he clothed himself with the authority of the State as a police officer in showing his police identification in allegedly attempting to arrest the claimant, requesting assistance from a special reserve police officer, and in pursuing a criminal charge against the claimant. Though his actions were motivated by anger and a desire for revenge, to satisfy his own ends, the second named defendant is vicariously

liable for those actions. See **Clinton Bernard v Attorney General** [Privy Council Appeal 30 of 2003 – delivered 7th October 2004]

Disposition

45. It is ordered that there be judgment for the claimant for damages for assault and battery to be assessed by this court in default of agreement.

46. It is further ordered that in the interim the second defendant do pay by way of interim payment the sum of **\$250,000.00 pending the final assessment of damages.**

Dated the 29th day of March, 2012

**Peter A. Rajkumar
Judge.**