THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2012-02695

BETWEEN

EMRAAN ALI

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Faraaz Mohammed for the Claimant

Ms. Christie Modeste, Ms. Kendra Mark for the Defendant

JUDGMENT

ORAL JUDGEMENT

BACKGROUND

1. The claimant lived with his mother, wife and children on the third floor of the premises at his mother's home in Rio Claro, and occupied part of the first floor. Another portion of the premises was rented to a tenant operating an auto body repair shop. On or about 5:30pm Saturday 5th July, 2008, as the Claimant arrived home, he met a party of police officers, including officers Harrysingh, Morris and Bacchus, conducting a search.

2. The Claimant was questioned in relation to several vehicles on the premises. Two of those belonged to him, a Land Rover Discovery, and the vehicle in dispute, a damaged Mazda B2500 pickup registration number **TBP 2969**.

3. The upstairs of the house was searched. The Claimant was arrested. He was then taken to the San Fernando Police Station, and then kept in custody for approximately two days and three nights, until the morning of Tuesday 8th July. The Claimant claims that from the time of his arrest at his home he was repeatedly and savagely assaulted by the police, officers Bacchus, Pierre, Singh, and Smith whilst in their custody as described in his witness statement, with the participation of officer Harrysingh to a lesser extent. **(See paragraphs 12, 15, 17, 18, 19, 20, 23, and 27 of the Claimant's witness statement)**

4. The police drove the claimant away in his Land Rover. It was subsequently returned to him. However the Claimant was charged with the offence of **unlawful possession of motor vehicle TBP2969** ("the said vehicle", or "the vehicle").

5. The matter was subsequently dismissed on the **15th January 2009** in the Magistrate's Court.

6. The police have refused to return **motor vehicle TBP2969** and continue to retain it in their possession.

7. The Claimant further contends that the police:-

a. had no **reasonable and probable** cause to **arrest and detain** him;

b. had no lawful justification to **search his home**;

c. **maliciously prosecuted** him on a charge of unlawful possession of motor vehicle **TBP2969**;

d. wrongfully and illegally **assaulted** him;

e. had no lawful justification for **seizing the vehicle TBP 2969;**

f. had no lawful justification for **detaining** that vehicle to date.

8. The Claimant accordingly claims inter alia:-

i. Damages for **unlawful arrest and false imprisonment**;

ii. Damages for **illegal search**;

iii. Damages for **malicious prosecution**

iv. Damages for **assault** and personal injury;

v. A declaration that the Claimant is the lawful owner of the Mazda B2500 Pick up registration number TBP2969; (the vehicle)

vi. **Damages for the** unlawful **continued possession and detention** of the Claimant's Mazda B2500 pickup motor vehicle registration number **TBP2969**;

vii. An order for the return of the Claimant's Mazda B2500 pickup registration number TBP2969 to the Claimant;

viii. **Special damages** in the sum of $24,000.00.

ISSUES

9.

a) Whether the officers had reasonable and probable cause to arrest and detain the claimant.

b) Whether the officers had lawful justification to search his home.

c) Whether the officers maliciously prosecuted him on a charge of unlawful possession of motor vehicle TBP2969.

d) Whether the officers wrongfully and illegally assaulted him.

e) Whether the officers had lawful justification for seizing vehicle TBP2969.

f) Whether the officers had lawful justification for detaining vehicle motor vehicle TBP2969 to date.

g) Whether the claimant has proved his claim for special damages.

h) The measure of general damages if any, including whether aggravated or exemplary damages are applicable.

FINDINGS AND CONCLUSION

Alleged unlawful arrest /Alleged malicious prosecution

10. I find that the officers did have sufficient cause to **arrest** and **detain** the claimant. They had information, whether admissible in court or not, to justify a reasonable belief that there were stolen vehicles on the premises occupied by the claimant.

11. The observation that the chassis number on the claimant's vehicle was tampered with was sufficient to link the claimant with the alleged activities on the premises, involving stolen vehicles in the process of having their identification information disguised.

12. The absence of a certified copy for that vehicle, though not required by law to be produced, would have served to compound that suspicion that:-

a. such activities were occurring on that compound, and

b. that the claimant, by his possession of a vehicle which appeared to have its chassis number tampered with, was also implicated in such activities.

13. Whether that were so or not, there was sufficient material to enable the arresting officer subjectively to come to the conclusion that the claimant was guilty of an arrestable offence, and to require him to answer such a charge and establish his defence before a court, if he were able to do so. It would have been stretching credulity to expect the officers to have considered that, consistent with the information they claim to have received, that it was merely coincidence that the chassis number on one of the claimant's vehicles appeared to them to have been tampered with.

14. The absence of a certified copy would have supported a conclusion that the transfer of ownership of that vehicle to the claimant had not passed the scrutiny of the Licensing Department. Inspection, at the time of transfer would have established inter alia,

a. the genuineness or otherwise of the chassis number, and

b. its status as a vehicle whose ownership could have been legitimately transferred by the alleged vendor.

15. That reasonable and probable cause was sufficient to justify the arrest of the claimant, some part of his detention, and the preferring of the charge and prosecution thereof. The officers, both subjectively and objectively, would therefore have had sufficient reasonable grounds for:-
a. the arrest of the claimant,
b. some part of his detention, and
c. the preferring of the charge and prosecution thereof.

Alleged false imprisonment - Continued detention

16. I find that the continued **detention** of the claimant beyond Monday July 7th at 8 am was unreasonable. He is entitled to damages for false imprisonment for the period of 24 hours beyond that time. If it were actually suspected that there may have been evidence to implicate the claimant in a car stealing racket on his farm, there is no reason why that visit to the farm or to his home could not also have taken place on Sunday July 6th after he had been interviewed. He could then have been taken before a magistrate on Monday morning instead of the morning of Tuesday July 8th. The purpose of the visit to the farm was ostensibly to see whether the claimant had in his possession on his premises parts relating to TCD 7600, which would have implicated him, in addition to "Shawn", in the theft of that vehicle, which was suspected to have been stolen.

17. However, as at Saturday July 5th at 5.30 pm the police believed that TBP 2969 was a stolen vehicle, as they believed that its chassis number had been tampered with, and they had found personal documents in that vehicle which did not relate to either the claimant or the person from whom he claimed to have purchased it.

18. In those circumstances they could have charged him with the same offence with which he was eventually charged, on the same evidence that they eventually had, from as early as Saturday July 5th. The additional investigations bore no fruit.

19. There is no reason proffered as to why the search took place on Monday July 7th rather than Sunday, July 6th after the claimant had been interviewed. The detention needs to be justified

by the police. It is not permitted by law for the police to detain in custody a suspect for whatever period, no matter how long that may be, that it takes for the police to conclude investigations.

20. If a suspect is the subject of continuing investigations then those investigations must proceed with expedition and efficiency. The claimant was detained in custody until around 8 am on Tuesday July 8th. Nothing further took place from 8 am on Sunday July 6th, after his interview, for 24 hours until he was carried by a party of officers on an exercise on the morning of Monday July 7th to search his home and / or farm. Even after that exercise had been concluded there is no explanation as to why he was only carried before a magistrate on Tuesday July 8th and not on the afternoon of Monday July 7th.

Seizure of the motor vehicle

21. With respect to the seizure of the vehicle the police were entitled, in the light of their suspicion that the chassis number had been tampered with, to seize the vehicle as evidence. In fact it was an exhibit for the prosecution's case of unlawful possession.

Continued detention of the motor vehicle

22. As far as the continued **detention of the motor vehicle** after the dismissal of the charge against him is concerned it has not been established after all this time that there is anyone with a better right to it than the possessory right that the claimant has. It must be returned to him. Special damages for its detention have not been proved. Accordingly nominal damages in the sum of $5,000 are awarded in respect of its detention.

Assault and battery

23. I find, on the basis of the independent expert medical testimony, that the police officers assaulted the claimant, and in the manner he described. They did so repeatedly, without any lawful justification whatsoever. Their conduct in doing so was not only unprofessional but illegal. It justifies an award of damages, including an award of exemplary damages, sufficient to deter such conduct. That conduct extended to conspiracy and complicity among themselves in an attempt to cover up the fact of such assault, and a persistence in denying, even before the High Court, that this occurred.

24. They were not entitled to seek to punish the claimant extra judicially. They were not entitled to place the claimant at risk of serious personal injury in the absence of a threat to themselves. I expressly find that there was no such threat. He was alone, in their custody and outmanned.

25. The sweeping powers granted to police officers are to be used within the confines and parameters of the law. In a democracy governed by the rule of law and the Constitution, they are not to be used, as I expressly find was done in this case, to infringe the safety, or security, of citizens, even when a person has been legitimately arrested in the course of police operations.

26. I have found as a fact, on a balance of probabilities:-

a. That the claimant was assaulted and battered for no reason;

b. That police officers, agents of the defendant, deliberately lied on oath about not assaulting and battering the claimant, and

c. That police officers conspired with one another and were complicit in concealing the truth from their superior officers, from attorneys at law for the defendant, and from the court.

27. This is conduct which cannot be condoned. It places all citizens, even the most law abiding ones, at risk - that they, themselves or their families could be branded as criminals, treated as such, and, before even facing a court, become a target of violence and brutality while alone and defenseless.

28. The defendants' agents repeatedly assaulted the claimant while he was in their custody, for no apparent reason. No apology was forthcoming. Instead the defendant's agents sought to portray him as a criminal and tarnish his reputation, even after the case against him was dismissed.

29. In this case I have found as a fact that the claimant posed no threat whatsoever to the safety of the officers involved. The claimant was battered for no reason, inflicting on him painful

injuries. The claimant was treated like a criminal on the mere suspicion that he was involved in a car stealing racket. However his guilt and punishment, if any, were matters for a court.

30. No cause existed for the attack and infliction of injuries upon him, or for his detention for the full period that he was in custody.

31. The law permits compensation to be awarded to him for excessive detention, and for his injuries, loss or damage, sustained as a result of that assault and battery. The law allows such compensation to include an uplift for the aggravating circumstances under which these occurred.

32. The law further allows exemplary damages to be awarded, taking into account any need to discourage such conduct in future.

33. The further comments of this court are aimed at preventing a repetition of similar behavior.

34. Apart from justice for the individual, the Court has a wider responsibility to the society. That responsibility requires that at a minimum the circumstances be examined and findings of fact made without fear or favour.

35. Such behavior can randomly target innocent citizens. No one can consider himself immune. The only safeguard is the courts' willingness to expose such behavior and enforce and uphold the rights of citizens. That is a remedy after the fact.

36. To reserve comment in a situation like the instant one is to participate in the culture of complicity which saw each officer involved in this incident testifying, despite clear medical evidence to the contrary, that no assault, battery or visible injury occurred to the claimant while he was in their custody. Hopefully, holding such conduct up to public scrutiny may prevent the erosion of the rights of law abiding citizens.

37. The duty of courts in a democracy which subscribes to the recognition, protection and enforcement of basic standards of treatment of its citizens, requires condemnation of high handed

and oppressive actions, behavior and conduct of the servants or agents of the State, lest they be condoned, encouraged, systematized and perpetuated.

38. This matter requires investigation of the officers named in this action, Sgt **Pierre # 12171**, **Harrysingh #12351**, **Bacchus #16778, Sgt Smith # 12302**, **PC Singh, #14469,** and officer **Morris #16886,** who were all entrusted with the responsibility to protect and serve. Without consequences there is no reason to expect that unlawful behavior violative of the rights of law abiding citizens will not be repeated.

Special damages

39. These must be specially pleaded, as they have been, and strictly proved, as they have not. While the claimant's own testimony is prima facie evidence of loss, strict proof would have required that the value of the items, especially the items claimed as new, be established, for example, by a price list, or a quotation from a supplier. The absence of proof of the essential matters of price, or value, or replacement cost, means that this claim must be disallowed. See **Raghunath Singh v MTS HCA 2193/2007** delivered on the 6th August 2012 where the various decisions of the Court of Appeal to this effect are set out.

DISPOSITION AND ORDERS

40. The issue of malicious prosecution does not arise.

ORDERS

It is ordered that

(i) The claimant be paid general damages for false imprisonment for a period of 24 hours of his detention in the sum of $45,000.00.

(ii) The claimant be paid general damages for assault and battery inclusive of aggravated damages in the sum of $55,000.00.

(iii) The claimant be paid nominal damages in the sum of $5000.00 in respect of the continued detention of motor vehicle TBP 2969.

(iv) Interest at the rate of 6 % per annum on each of the above sums from July 4th 2012 (the date of the claim form).

(v) Exemplary damages in the sum of $90,000.00.

(vi) The return of the vehicle TBP 2969 within 7 days. In default the defendant is to pay to the claimant the sum of $55,000.00, -its value at the date of seizure -, with interest thereon at the rate of 6 % from November 2nd 2012 (the date of the amended claim form).

(vii) Costs on the basis prescribed by the Civil Proceedings Rules for a claim in the total of (i), (ii), (iii), (iv), and (v)

(viii) Liberty to Apply.

Dated this 18th day of March, 2014

……

Peter A. Rajkumar

Judge

REASONS FOR DECISION

ANALYSIS AND REASONING

41. **The reason for the arrest and detention of the claimant is found inter alia in the Witness statement of Lincoln Morris (See *Paragraphs 9, 14, 17)***

1. *I subsequently returned to the garage and started making checks around the area. In the garage area, I observed a vehicle chassis with the front and back bumper attached bearing the registration number **TCD 7600**. I observed a silver Ford Ranger cab, minus doors, with Davey Radiator Works sticker on the front windshield. Additionally, the front fenders were separated from the cab. There was an engine nearby and its **number** was **removed**. **The chassis number** on the chassis with the registration plates TCD 7600, was also **ground off.** There were also several other miscellaneous parts close by and I therefore formed the opinion that it all belonged to the subject Ford Ranger that had been stolen.*
2. *The Claimant was taken back to the San Fernando Police Station where he was further interviewed. The vehicles we saw were seized and taken back to the station. At the station the vehicles were handed over to Acting Corporal Singh for safekeeping. The Claimant*

was handed over to the station sentry to be later interviewed by the investigator WPC Pavy. I reported off duty at that time and later returned to the station and continued inquiries with respect to the vehicle TBP 2969 and PBO 1575. My enquiries revealed that the documents found in PBO 1575 bearing the names Sharon Mohammed and Sharon Masson were in favour of persons who had reported their vehicles stolen. Further, a ***receipt found in TBP 2969 was*** *from 'Michelle and Tiny supplies'* ***in the name of Andre Basdeo*** *who had similarly reported a vehicle stolen from him.*

3.

4. *After he was examined, the Claimant was then taken back to the Police Station where I formally* ***charged him for unlawful possession*** *of TCB 2969.* ***He was charged because the chassis number appeared to be tampered with,*** *and he produced no receipt for the vehicle although he stated he bought the vehicle from one '(name given) for whom he could not give an address or contact number. Further,* ***TCB2969 was found on a compound with another stolen vehicle namely TCD7600, several documents were found on the said compound which all belonged to persons whose vehicles were reported stolen****. In the circumstances,* ***I honestly believe that the vehicle TCB2969 is a stolen vehicle or otherwise unlawfully obtained.***

LAW

Reasonable and probable cause to justify the arrest

42. Section 3 (4) of the Criminal Law Act Ch 10.04 provides that

"where a Police Officer, with ***reasonable cause****, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with* ***reasonable cause****, suspects to be guilty of the offence."*

43. Similarly, in **section 46 (1) (d) of the Police Service Act Chapter 15:01**

a police officer has the power to arrest without warrant a person ***in whose possession anything is found which may reasonably be suspected to have been stolen*** *or who* ***may reasonably be suspected*** *of having committed an offence with reference to such thing.*

44. The onus is on the police to justify the arrest of the Plaintiff in an action for unlawful arrest and to establish **reasonable and probable cause** for the arrest: ***(Dallison v Caffery [1965] 1 Q.B. 348 at 370)***.

45. The test required was stated in **O' Hara v Chief Constable of the Royal Ulster Constabulary [1997] 1 AER 129 p 138j –139a) per Lord Hope of Craighead** as **partly objective and partly subjective**. The test is subjective because the arresting Police Officer must have formulated a **genuine suspicion** within his own mind that the **accused person has committed the offence**.

46. Further, the test is partly objective as **reasonable grounds** for the suspicion are required by the arresting officer and this must be judged at the time when the power is exercised. (See also the judgement of the Honourable Mendonca J as he then was in **Harold Barcoo v A.G of T. & T. and Browne – HCA 1388 of 1989** delivered December 19, 2001 page 5 –6 where he adopted the following analysis from the text (**Clayton & Tomlinson Civil Actions against the Police (1987.**

*i. The test whether there was **reasonable and probable cause** has **both subjective and objective** elements.*
ii. Did the officer honestly have the requisite suspicion or belief?
*iii. Did the officer when exercising the power **honestly believe** in the existence of the objective circumstances which he now relies on as the basis for that suspicion or belief?*
*iv. Was his **belief** in the existence of these circumstances **based on reasonable grounds**?*
*v. Did these circumstances constitute **reasonable grounds for the requisite suspicion** or belief?*

47. The first two are subjective and the second are objective and as the Honourable Justice Mendonca, as he then was, pointed out, if the answer to any one of these questions is "no" then the officer would not have had reasonable grounds.

48. In determining whether the arresting officer had reasonable and probable cause, the first enquiry is to ascertain what was **in the mind of the arresting officer** and to determine whether the grounds on which the arresting officer relied as the basis for his suspicion were **reasonable**.

49. Wooding L.J. in **Irish v. Barry [1965] 8 W.I.R 177** at page 182 stated the two questions to be separately posed and answered as follows: (1) do those facts warrant a suspicion that a felony has been committed, and (2) do they also warrant a suspicion that the person whose arrest is contemplated committed it or was a party to its commission?

50. It is clear therefore that the police officers did have reasonable and probable cause to arrest and to detain the claimant, as follows:-

(i) He occupied premises on which was found the vehicle TCD 7600- which any reasonable person would in the circumstances have believed to have been stolen.
(ii) Information had been furnished to the police concerning TCD7600 which had been reported stolen. and it appeared to be in the process of having its identity concealed by, inter alia, **tampering with its chassis number**
(iii) His own vehicle TBP 2969 **appeared** to have its **chassis number tampered with**.
(iv) His own vehicle had within it personal items that clearly belonged to someone else.

51. It would not have been unreasonable to infer that a person who transferred ownership in the normal course of things would have ensured that such personal items had been first removed.

52. The claimant claimed to have produced a receipt. This is denied. Whether that were the case or not, the vehicle TBP 2969 appeared to have been tampered with and was in a compound with other such vehicles. The police were entitled to the view that this was not a mere coincidence

53. Parts were missing from TCD 7600. The police were entitled to the view that the claimant may have been involved, as the chassis number of the vehicle of which he admitted ownership, was itself apparently tampered with. They were also entitled to pursue this line of inquiry and

conduct searches for the missing parts at premises of the claimant, as they subsequently did when they obtained a search warrant for this purpose.

Malicious Prosecution

Law

54. It may sometimes be contended that a prosecution is unreasonable, not on the ground that the prosecutor had no substantial information before him pointing to the guilt of the claimant, but **because he was also aware of countervailing evidence which afforded a good answer to the charge.** A prosecutor has no right to pick and choose among evidence before him, and act only upon such portions of it as to show that he has good cause for proceeding**; nor is he bound to assume that the theory put forward in the defence is sound** (See Clerk & Lindsell 19th Edition paragraph 16-28) at page 986.

55. Further, the prosecution **need not believe in the probability of conviction** and **need not test the full strength of the case: (See Glinski v Mc Iver [1962] A.C. 726, 776** as quoted **in Harold Barcoo v the Attorney General of Trinidad and Tobago and Inspector Phillip Browne HCA No. 1388 of 1989**)

56. Moreover, there is no duty on the part of the officer to determine whether there is a defence to the charge but **only to determine whether there is reasonable and probable cause** for the prosecution **(See Herniman v Smith [1938] AC 305).** Per Lord Atkin:

"No doubt circumstances may exist in which it is right before charging a man with misconduct to ask him for an explanation. But certainly there can be no general rule laid down, and where a man is satisfied, or has apparently sufficient evidence, that in fact he has been cheated, there is no obligation to call on the cheat and ask for an explanation which may only have the effect of causing material evidence to disappear or be manufactured. ***It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action****.* ***His duty is not to ascertain whether there is a defence, but whether there is reasonable and probable cause for a prosecution****."*

57. Additionally **it is not the duty of the said officer to resolve conflicts of evidence and knowledge of these conflicts does not demonstrate a lack of reasonable and probable cause nor is it inconsistent with the prosecutor's honest belief that there is a case against the accused fit to go to trial. (See Dallison v Caffery [1965] 1 QB 348 page 376).**

58. Also, **it is not for the prosecutor to determine whether the witness is in fact telling the truth - this is the function of the trial judge *(See Glinkski v Mc Iver (supra) page 758).***

59. In the case of Mc *Ardle v Egan and others* [1933] All ER 611 Lord Wright stated that:
"A constable is justified in arresting a person without a warrant, upon reasonable suspicion of a felony having been committed… and the person being guilty of it, ***although no felony has in fact been committed****, and* ***whether*** *the reasonable* ***grounds for suspicion are matters within his*** *own* ***knowledge or are facts stated to him by another****. So that the inquiry is as to the* ***state of mind*** *of the chief constable* ***at the time*** *he ordered* ***the arrest****, and it involves that it must be ascertained* ***what information he had at the time****, even though that information came from others. Of course the information must come in a way which justifies him in giving it credit; the suspicion upon which he must act, and indeed, ought to act, in the course of duty, must be a* ***reasonable suspicion****."*
Lord Wright in *Mc Ardle v Egau (1963) All E.R. 613* he stated:
"*Police officers, in determining whether or not to arrest, are not finally to decide the guilt or innocence of the person arrested."* ***And later*** *"...but once there is what appears to be a reasonable suspicion against a particular individual,* ***the police officer is not bound, as I understand the law, to hold his hand in order to make further enquiries*** *if all that is involved is to make assurance doubly sure."*

Reasonable and probable cause to justify the prosecution

60. The defendant's agents did not have to test the full strength of the claimant's defence. They simply had to ensure that there was a reasonable and probable cause for the prosecution. The same matters constituting reasonable and probable cause that entitled the defendant to arrest the claimant entitled the defendant to maintain the prosecution. In the circumstances outlined above

it cannot be said that the defendant's agents did not have reasonable and probable cause to prosecute the claimant in relation to his alleged ownership and possession of TBP2969.

Reasonable Grounds for belief that serious offence committed

61. I find that the arresting officer had reasonable cause to suspect that serious offences had been committed, including the offence of larceny or unlawful possession of motor vehicles TCD 7600 and TBP 2969.

62. TCD 7600 had been reported stolen, and it appeared to have chassis number tampered with. TBP 2969 likewise appeared to have had its chassis number tampered with, and it contained personal documentation of persons other than the claimant, as did other vehicles on the same compound.

Reasonable grounds to believe that the Claimant was guilty of the crime, or implicated in it, or an accessory to it included:

63. The coincidence of so many suspicious vehicles on the same compound, together with the questions raised by TBP2969, entitled the police to the view that TBP 2969 may have also been stolen. The absence of an explanation for the claimant's failure to transfer the vehicle TBP2969 into the claimant's name, in the totality of the circumstances, would have entitled the police to the view that the claimant was implicated in the suspicious activities on his mother's compound.

64. The police officers therefore had sufficient information in their possession at the time of making the arrest to suggest:-

a. offences had been committed;

b. that the claimant was involved or implicated therein.

65. **There was no evidence that the vehicle had been transferred** to the Claimant, even though section 19 (6) of the Motor Vehicle and Road Traffic Act, Chapter 48:50 makes the failure to transfer after 14 days an offence. They did not have to accept the receipt, even if any had been produced by the Claimant, (which is denied), if in all the circumstances they did not

find it to be sufficient, when compared with and weighed against the information in their possession.

Seizure of the motor vehicle

66. The police officers indicated that their reason for apprehending the Claimant in the instant matter was that there was **suspicion that his motor vehicle was stolen**.

Did the arresting officer honestly have the requisite suspicion or belief?

67. I find that, in the circumstances established on the evidence, including a chassis number which appeared to have been tampered with, the arresting officer would honestly have had the requisite suspicion or belief.

FINDINGS

68. I therefore find that the police officers did in fact have sufficient cause to believe that the vehicle was a stolen vehicle when they came to the claimant's premises. Even if the claimant had produced a copy of a purported receipt for $55,000.00 for the vehicle, he was not able to produce a certified copy of ownership. While the failure to provide a certified copy of ownership was not an offence, or a contravention of any law, the fact that the claimant's transfer had not been registered meant that it had not been the subject of scrutiny at the Licensing Department, where any discrepancy with respect to the chassis number could have been discovered and rectified, if that were possible.

69. The defendant's agents were entitled to their suspicion that the claimant's vehicle, like TCD 7600, was stolen. Further his relying only on the alleged receipt as evidence of ownership as he claims would not have assisted him. In fact it corroborated the fact that a proper transfer at the Licensing Department had not yet been effected.

70. **Section 19 (6) of the Motor Vehicle and Road Traffic Act, Chapter 48:50 makes the failure to transfer after 14 days an offence -**

(6) Where a registration of transfer referred to in subsection (5) has not been made within fourteen days after the change of possession of that vehicle, the registered owner is guilty of an

offence and is liable upon summary conviction to a fine of five thousand dollars and imprisonment for six months.

71. Therefore, I have no doubt that in fact the defendant's agents did in fact have **sufficient cause to believe that the vehicle was a stolen vehicle** when they came to the claimant's premises, and that that suspicion would only have been compounded when the claimant produced only a copy of a receipt for $55,000.00 for the vehicle, and was not able to produce a certified copy of ownership.

72. I accept that the police believed, and had reasonable grounds to believe, that the chassis number on the claimant's vehicle appeared to have been tampered with, and therefore that vehicle, like TCD 7600, could have been stolen. It was found on premises with other vehicles including TCD 7600, in circumstances which appeared highly suspicious.

73. TCD 7600 was in a disassembled state. The chassis number and engine number appeared to have been tampered with, though, strangely, the registration number had not yet been removed. There was a report by, or on behalf of, the owner of that vehicle and a prima facie identification by, or on behalf of, him.

74. Whoever had that vehicle in his possession could reasonably expect to have to explain the circumstances, and should not have been surprised to face a charge of larceny of a motor vehicle. At that point the police were entitled to the reasonable even though mistaken view that the claimant was implicated in the theft of that vehicle in circumstances where:-

a. the vehicle that he admitted ownership or custody or control over, (the subject vehicle), itself appeared to have had its chassis number tampered with,

b. the claimant had vehicles of his own on the same premises, though he sought to differentiate them from those under the custody or control of "Shawn,".

c. personal items in the name of persons other than Shawn were found on the premises, including a driving permit, tax/insurance receipt, and Unit trust (financial institution) statements that one would not normally expect persons to have left in the custody of others.

d. TCD 7600 was apparently being tampered with, and disassembled, and its identity via its engine number and serial number was in the process of being disguised.

Strong suspicion of illegal activity involving motor vehicles was bound to put the officers upon inquiry that persons on the scene, who also had vehicles with prima facie indications of tampering therewith, might also be implicated.

75. If, though denied, the claimant did in fact produce as his evidence of ownership simply a receipt then it was clear that the vehicle, even damaged as it was, and in need of towing (according to claimant's attorneys), had not had its ownership transferred via the Licensing Authority.

76. These matters could reasonably have alerted the defendants to the fact that the status of the defendant's vehicle, and his possible involvement in the activities taking place on his mother's premises, though rented to "Shawn," also justified further investigation.

77. The police were entitled to arrest the claimant upon observing what they believed to be tampering with the chassis number of his vehicle, and they were entitled to detain him while they investigated, as they did, whether the parts missing from TCD 7600 were in his possession at some other location.

78. I find that the officers did have reasonable and probable cause, and all four elements - objective and subjective -were established as set out below.

Did the officer when exercising the power, honestly believe in the existence of the objective circumstances which he now relies on as the basis for that suspicion or belief.

79. At the time of arrest the arresting officers knew of suspicious circumstances relating to the claimant's motor vehicle, and contents therein, and alleged activities on the premises. The officers were entitled to form the view that there was a correlation between their information on those activities and the alleged interference/tampering observed on the chassis number. I find that the arresting officer honestly believed in the existence of the objective circumstances outlined above.

Was the officers' belief in the existence of these circumstances based on reasonable grounds?

80. It cannot reasonably be contended that they were not. Any suggestion that the officers in those circumstances had an obligation before arresting the claimant to conduct further investigations and check, for example, the person from whom the claimant allegedly purchased the vehicle, is unsustainable.

Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?

81. These circumstances did constitute reasonable grounds. The police did not take it upon themselves to simply arrest the claimant for no reason. They did have a reason, and I find that it was at the time a sufficient and reasonable one.

82. It must be concluded therefore that the police did have reasonable and probable cause to arrest the claimant. This is a totally separate matter from the issue of the claimant's guilt or innocence. In the circumstances of this case therefore, the defendant's version of events at the time of arrest is preferred. It is supported by the first search warrant that was produced, which supports the allegation that they were in possession of information, though relating to "Shawn", before arriving at the premises.

Was the length of the Applicant's detention unreasonable?

83. The claimant was taken into custody on the afternoon of Saturday the 5th of July. He was interviewed early on the morning of Sunday July 6th around 8 am. On the morning of Monday July 7th he was taken to Rio Claro by a party of officers in search of the items relating to TCD 7600, which it was suspected were in his possession. I have held that suspicion to have not been unreasonable.

84. The time of return to the police station is not indicated in the extracts of the station diary in evidence. What is indicated however is that nothing on the search warrants was found at the point when the officers returned to the station on Monday July 7th. They would have had to make a decision to charge the claimant based on the information in their possession. Having been taken into custody from around 5.30 pm on Saturday 5th July, it appears that almost 24 hours elapsed

between the interview of the claimant around 8 am on Sunday 6th July, and the departure on the search exercise on Monday July 7th.

85. Even assuming that investigations of some sort were continuing in that interval, (and there is very little evidence that they were), there is no explanation as to why the claimant was not charged and brought before a magistrate on the return from that exercise on Monday, instead of having to wait until Tuesday July 8th.

86. The further period of 24 hours between his interview on the morning of Sunday July 6th and the departure on the exercise on the morning of Monday July 7th stretches the limits of what would be a reasonable period of detention between investigations. His detention without charge for a period of approximately 24 hours after that interview, with no further step being taken in that time, has not been justified.

87. His detention cannot all be accounted for by the need for ongoing investigations to confirm or refute the claimant's involvement in the receipt or possession of the parts missing from TCD 7600.

88. When one considers that during that time, as the medical evidence clearly reveals, the claimant was subjected to physical assaults by the police, then it is clear that his detention for part of that period cannot be considered lawful. The period of his unlawful detention would be approximately 24 hours from Monday morning to Tuesday morning. Of the 24 hour period between Sunday morning and Monday morning I take into account that although he could not have been brought before a magistrate before Monday morning, the claimant could have been carried on the search on Sunday rather than on Monday, and there is no apparent reason why he could not have been brought before a magistrate on Monday afternoon, even taking into account the need for a prior hospital visit.

Law – False imprisonment

89. An arrest involves a trespass to the person which is prima facie tortious. This trespass by the arrestor continues so long as he retains custody of the arrested person. The arrestor must justify **the continuance of his custody** by showing that it was reasonable. See **Dallison v**

Caffrey per **Diplock** L.J. at pages 370, 371 cited by Sinanan J. as he then was in **Mondesir v the Attorney General, HCA No. 1903 of 1997 at 27.**

90. In the **Mondesir** case, Sinanan J. held that the applicant in that case should have been charged within three hours of his arrest. In that case, the police had all the evidence that they were likely to have by the time of their interview with the applicant. The reason given for not charging the applicant, namely, the delay in locating a potential co-accused was found not to be satisfactory. In that case, he held (at page 32):

"The failure to charge the applicant had important consequences for the applicant. It denied him the opportunity of being bailed that evening, that is, the evening of the 21st or being brought before a Magistrate at 9:00 a.m. the following day in accordance with his right as preserved by Section 5(2)(c)(iii) of the Constitution".

91. It was in those circumstances that he found that his detention was unnecessarily protracted and was excessive and unreasonable. See **Dallison v Caffrey [1965] 1 Q.B.** at page 367: B -D

"When a constable has taken into custody a person reasonably suspected of felony, ***he can do what is reasonable to investigate the matter, and to see whether the suspicions are supported or not by further evidence. He can, for instance, take the person suspected to his own house*** *to see whether any of the stolen property is there;* ***else it may be removed and valuable evidence lost****. He can take the person suspected to the place where he says he was working, for there he may find persons to confirm or refute his alibi. The constable can put him up on an identification parade to see if he is picked out by the witnesses.* ***So long as such measures are taken reasonably, they are an important adjunct to the administration of justice. By which I mean, of course, justice not only to the man himself but also to the community at large. The measures must, however, be reasonable."***

Reasonable and probable cause to justify arrest and continued detention

92. The relevant principles were recently summarised in **Ramsingh v. The Attorney General of Trinidad and Tobago [2012] UKPC 16** delivered **May 23rd 2012** as follows (emphasis added).

1. Section 3 (4) of the Criminal Law Act Ch 10.04 provides "*where a Police Officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence*."

i) *The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.*

ii) It is for the arrestor to justify the arrest.

iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.

iv) Thus the officer must ***subjectively*** *suspect* ***that that person*** *has committed such an offence.*

v) The officer's belief must have been ***on reasonable grounds*** *or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.*

vi) ***Any continued detention after arrest must also be justified by the detainer.***

9] *These principles are established by a series of cases, both in England and in the Caribbean. See in particular* Dallison v Caffery *[1965] 1 QB 348, [1964] 2 All ER 610, 128 JP 379, per Lord Denning MR at 617 and per Diplock LJ, in a well-known passage at 619; and* Holgate-Mohammed v Duke *[1984] AC 437, [1984] 1 All ER 1054, [1984] 2 WLR 660 per Lord Diplock at 1059. See also two decisions in Trinidad and Tobago which make it clear that the lawfulness of continued detention raises different questions from those relevant to the arrest:* Mauge v The Attorney General of Trinidad and Tobago *HCA No 2524 of 1997 and* Mungaroo v The Attorney General of Trinidad and Tobago *HCA Nos S-1130 and 1131 of 1998.*

[10] *The position after arrest in England is now to be found in Pt IV of the Police and Criminal Evidence Act 1984 ("PACE"): see s 34. Section 37(2) provides that, where a*

person is arrested without a warrant and the custody officer does not have sufficient evidence to charge him, the person arrested must be released either with or without bail:

"unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him."

As Clayton and Tomlinson put it in their Law of Human Rights, *2nd edition (2009), at para 10.56,* ***the police must justify detention on a minute by minute basis***.

93. Accordingly, I find that the police were entitled to make further enquiries and take further steps as such may even have led to the exoneration of the Claimant . It is clearly adverted to by Lord Diplock that some delay after arrest may be justifiable if explained by the taking of such steps, and that such delay may actually be in the arrested person's interest as it may result in his release without charge.

94. In this case the police continued investigations in an effort to link the missing parts for TCD7600 with the claimant. They had sufficient evidence at the time of arrest to prefer a charge against the claimant in connection with the fact that he had in his possession a vehicle which they had cause to believe was a stolen vehicle. Their further investigations to uncover any further allegedly stolen vehicles or parts could have been justifiable. However I find that the period of his detention without charge in these circumstances would have been justifiable only up to a point.

95. For the reasons set out previously I find that his detention exceeded a reasonable period by twenty four hours (24). From Sunday morning at 8.am when he was interviewed ,to Monday morning at 8, when he was carried on the search exercise, he was detained in custody. The failure to conduct that exercise on Sunday itself deprived him of the opportunity of being brought before a magistrate and obtaining bail on Monday morning. Even on his return from the search exercise, or after his visit to the hospital he was not taken to court. The unacceptable result was he had to spend yet another night in police custody.

96. I find therefore on a balance of probabilities that although the arrest of the claimant was based on reasonable and probable cause; the period of his detention in the circumstances was excessive;

THE ALLEGED ASSAULT

97. The evidence for this comes from the Claimant's ***Witness Statement (Paragraphs 12, 15, 17-20, 23, 2)7***

> *12. During this search I was threatened, assaulted and beaten by Officer* ***Bacchus****. More specifically I was jammed against the wall, choked lifted partially off the ground until I was tiptoeing and was cuffed hard on my head once. My head began to hurt. "****Bacchus****" threatened me in a rough manner "Don't feel we is country police, we don't make joke tell we where the guns and money is." I pleaded with "Bacchus" telling him that I was unaware of any guns and money. I didn't know what they were talking about. I became fearful of further harm being done to me.*
>
> *15. I was eventually taken out of the holding cell later that night by an officer I didn't know. He carried (me) to a room with desks and chairs. Officer Harrysingh, P.C. Morris, "Bacchus" and the escorting officer were present. I did not know that officer's name. Each of them requested I sign a document the contents of which were hidden from my view by being covered with a book. I refused. I was again threatened if I refused I would be beaten to sign the document. The officer I didn't know threatened to break my foot and damage me. I refused to do so and was pushed and choked by Officer* ***Bacchus*** *and taken back to a holding cell where I remained in custody.*

17. On the 7th July, 2008 around 7:00 a.m. I was handcuffed and placed in the back of a SUV vehicle. I observed there were three vehicles all filled with police officers dressed in black and plain clothes. Officer ***Harrysingh*** *told me that they were taking me Rio Claro. He further said they have my files and I was deported and have in my possession a stolen Escalade. He went to say they know where I really live and I have to take them there or they will kill me. We left San Fernando. They sped off with the sirens driving hastily and recklessly in the direction of Rio Claro.*

18. When we arrived at Rio Claro I told ***Harrysingh*** *I lived at the same house I was taken from. He got angry and told me I carrying them on a wild goose chase and pelt me with a filled plastic water bottle which hit me hard in the chest.*

19. Harrysingh told the driver pull up. I was then taken to a lonely road called Bamboo Trace, Rio Claro. I was pulled out of the vehicle and leaned up against it. I was still handcuffed with my hands to the front of me. I was wearing my topee which was grabbed off by an officer ***Singh*** *and thrown in the bushes.*

20. I was further assaulted and beaten about my body by Officer ***Bacchus*** *and two (2) other officers, "****Pierre****" and "****Singh****".*

23. Then ***Smith*** *came to the SUV opened the left back door. He was partially in the vehicle and then took a wooden baton about three feet long. Smith told me I was a criminal and a deportee and he will teach me a lesson. Trinidad different from the States. He then started to violently jab me with the baton about twelve times. I again tried to*

block the blows but it was difficult with the handcuffs. I was in a lot of pain and having problems breathing.

27. We arrived at the San Fernando Police Station about 2 p.m. I was in a lot of pain all over my face, forearms, shoulders and feet. My body ached and I felt some swelling. It was really painful to walk. I again begged to be taken to the doctor but my pleas were ignored.

98. **CHRONOLOGY**

Saturday July 5th 2008

Claimant arrested around 5.30 pm

At page 266 the station diary records observation of engine number and chassis number of TBP 2969 and that they appear to have been tampered with. Also a receipt and deposit slip in the name of one André Basdeo.

Sunday July 6th

Claimant Interviewed between 7.30 am and 8 am

Monday July 7th

Sgt **Pierre # 12171** drove PBZ 1412 with claimant,

Harrysingh #12351, Agostini #14724, **Bacchus #16778**

Sgt Smith # 12302 driving TCB 8542 with #13410 Hosein, #14469 **PC Singh, #16886** Morris - **search around 8.40 am**

Monday July 7th

1.39 pm attorney visits

Tuesday July 8th - 7.40 am

Claimant conveyed to court

Tuesday July 8th (around 6pm)

Medical **examination**

Report by Dr Ferdinand County Medical Officer of Health

July 10th – claimant complains to magistrate of assault by officers

EVIDENCE

Evidence of Bacchus and Morris

99. Basically, they saw nothing in the nature of the assault that the claimant complained of and they did not participate in any such assault

Evidence of Richard Smith

100. He testified that he also saw nothing in the nature of the assault that the claimant complained of and he did not participate in any such assault.

Evidence of Ramdass

101. He took the claimant to Dr Jason Rampersad at the Casualty Department San Fernando He observed no injuries on the claimant. Neither did he hear the claimant complain of any injury or assault. He received a medical certificate from the doctor. That certificate referred only to an *acute asthmatic attack mild to moderate.* This was despite the fact that the form on which it was recorded being specifically directed to the recording of any **traumatic injuries** observed by the very headings on the form used, such as - "*state the nature of the instrument with which the **injuries** were probably **inflicted** and the **probable degree of force** which was used*" In fact the form has the following to be completed "*the **injuries** were probably inflicted with a* …"The doctor completed that sentence, completely ignoring the key word ***injuries***, by inserting the words "*acute asthmatic attack mild to moderate".*

Independent medical evidence

102. However, promptly after he was released on bail the next afternoon, the Claimant was medically examined by Dr. Ferdinand. He testified that he recorded visible physical injuries in a

report as set out below. Doctor Ferdinand testified that he observed injuries, and that those injuries were *most likely produced by a blunt instrument using* ***moderately severe force***.

103. He also confirmed that some of those injuries would have been visible. He confirmed that those injuries were unlikely to have been self inflicted.

Medical Report

Date: 8/7/08

Name: Imran Ali

Age: 41

Address; 12 Rio Claro Mayaro Road Rio Claro

This certifies that I saw the above on 8th July 2008 at approximately 6:00 pm. He complained of being beaten by police thus sustaining multiple injuries.

On examination I found the following:

1. Tenderness ***swelling*** *and abrasions* ***right side of head*** *involving temporal and parieto-occipital areas.*

2. Left periorbital ***haematoma with tenderness and swelling left side of face*** *involving* ***temple*** *and* ***cheek*** *area.*

3. Areas of ***haematoma***, ***abrasions***, ***tenderness*** *and* ***swelling****; left antero lateral arm extending from shoulder to* ***elbow****.*

4. ***Abrasions*** *tenderness and* ***swelling*** *ulnar aspect of left* ***forearm extending from wrist*** *to ... mid left shoulder.*

5. Tenderness ***swelling*** *and* ***bruising*** *left upper chest extending into left shoulder*

6. Tenderness ***swelling*** *and* ***bruising*** *left instep.*

The patient was treated with a course of analgesics and antibiotics. Most likely these ***injuries*** *were* ***produced*** *by a* ***blunt instrument*** *using* ***moderately severe force***. (All emphasis added)

Carl L. Ferdinand

.....

Dr. Carl Ferdinand

County Medical Officer of Health

Nariva /Mayaro

104. Dr Ferdinand's findings in his medical report are consistent with the Claimant's evidence as to where he received the various blows about the body during the assault. I find as a fact that the claimant's witness, Dr Ferdinand, (despite his having been brought to court in the claimant's car), was an independent professional. He testified as to injuries that he observed, many of which would have been visible to the defendant's witnesses.

105. I find as a fact that the claimant had observable injuries when he presented to Dr Ferdinand. I find that it was extremely unlikely that those injuries were self inflicted.

106. The only realistic possibility therefore is that all the defendant's witnesses – officers who were present on the exercise and who interacted with the claimant, were being deliberately untruthful when they testified that they had not themselves inflicted any injuries on the claimant, and neither did they observe any incident which could account for those injuries having been sustained, including the infliction of injuries by others.

107. In fact they all, without exception, claimed that they observed no injury whatsoever. Even the claimant's visit to a doctor, while still in custody of the defendant's agents, was explained as being the result only of an asthmatic attack.

108. The only other possibility, that they were inflicted by unknown third parties after the release from custody of the claimant, is simply mentioned for completeness. This is rejected as being extremely unlikely and based on no evidence whatsoever.

109. It is clear on the evidence that the claimant was telling the truth about having sustained injury. That necessarily leads to the conclusion that, injury having been sustained, that the defendant's witnesses were, one and all, not being at all truthful when they testified that the claimant had no injuries. This should be startling.

110. Many of the officers were promoted since this incident. They include the officer who was in charge of the search exercise on the Monday July 7th 2008 when the claimant alleges that he was taken to a lonely road and assaulted and battered. According to the evidence of (now) Inspector Smith, the party, although they may have travelled in more than one vehicle did not separate.

111. That being so I find that the defendants witnesses **Lincoln Morris, Barry Bacchus, and Inspector Richard Smith** - were untruthful in saying that they did not observe injuries on the claimant, and were therefore untruthful in their evidence that they did not either:-

a. inflict those injuries, or

b were not present when those injuries were inflicted on him.

Cpl. Ramdass was not party to the infliction of injuries. His role was simply to convey the claimant to Hospital, although he also chose to observe that nothing was amiss.

112. This is a remarkable conclusion. It means:-

a. that the officers were all complicit in the infliction of injury on a person who was entitled to be presumed innocent until proven otherwise.

b. were all prepared to testify untruthfully before the High Court and disregard their oath to tell the truth.

I expressly find that that is precisely what they did.

113. There can be no justification for such conduct. The claimant suffered an ordeal that was completely without any justification. Injuries were inflicted on him for absolutely no reason other than that he was alone and the officers were in a position to do so without check or consequence. That is conduct that must fall within the category that would attract exemplary damages.

Visit to Hospital

114. The Claimant was taken to the hospital. It is alleged that this was because he suffered an asthmatic attack. A medical report was issued to that effect. The doctor who produced that report was not brought to court to testify.

115. It would have been useful to hear whether, in addition to the diagnosis of asthma, that doctor had observed the injuries, which I find, from the evidence of Dr Ferdinand,-

a. were sustained, and

b. were visible.

It would also have been useful to hear why, if so, they did not feature in that report.

116. The inference from the evidence of the claimant, and which evidence I accept, is that a medical practitioner produced a medical report that deliberately omitted mention of visible and painful injuries, and was therefore complicit with the police witnesses in this matter to cover up a shameful, and unlawful assault. That inference has not been rebutted.

117. In fact the form itself, on which the doctor produced his report, directed the doctor to record observed **injuries**. To simply record "*acute asthmatic attack mild to moderate* " on such a form while omitting the **injuries**, is curious and disquieting, as I find as a fact, that they were there to be observed, and were observable on even a cursory examination.

118. If that were in fact the case it would be difficult to adequately express the court's disappointment and concern that a medical practitioner should compromise his oath to the extent of being complicit with police brutality.

119. Without hearing from that doctor no further comment is made about the ethics of producing a medical report on a prisoner or person in custody which omits mention of marks of violence.

The Evidence upon Cross-Examination

The evidence re the Assault

120. For the sake of completeness the observations of the defendant on the claimant's evidence are set out hereinafter and analysed. It was contended that the Claimant asserts that he was interviewed by a female police officer and another officer referred to as "Ram" after being previously assaulted and threatened by Officers Harrysingh, Morris and Bacchus the night before. Yet, his evidence does not make any mention of having complained of this treatment to the female police officer or "Ram" during the course of the interview. It was submitted that it should be inferred that he did not so complain, and one must ask whether it would have been expected that he do so if he were in fact assaulted and threatened as claimed.

121. I find however that the opposite can also be inferred, and is in fact more likely. Namely, having been subjected to assaults from several officers, in custody, alone and without representation, the claimant may have been unable to differentiate between which police officers it made sense to complain to, if any, and which were likely to assault him further, or likely to be complicit in any assault.

122. No inference in favour of the defendants can be drawn in the circumstances from any failure to complain to the female or any other officer.

123. It was contended that although the Claimant said under cross-examination that his injuries at that point in time were visible and that his mother would have seen his injuries when he was brought to his home on the 7th of July, 2008, yet the Claimant did not call his mother as a witness to attest to any visible injuries being sustained at that time.

124. However I find that the claimant did better than that. Rather than call his mother, who might be expected to be somewhat partisan in her testimony, he called the independent doctor who examined him immediately upon his release.

125. It was also contended that although the Claimant stated under cross-examination that sometime during his visit to the San Fernando General Hospital he saw and was able to speak with his wife briefly, this is not stated in his witness statement.

126. However, these, in context, are trivial discrepancies, if discrepancies at all. I find that neither this, (nor the fact that he did not mention in his statement of case that his wife was present with him when he arrived at his home, nor the omission to state in his witness statement the fact that he was able to see his wife briefly), is such a significant omission as to bring into question the claimant's evidence concerning the independently corroborated fact that he was assaulted and sustained visible injuries.

127. They do not detract from the fact that the claimant has proven that he sustained visible **observable** injuries which were **observed**, by a professional medical officer, (whom I accept as an expert), shortly after his release from custody.

128. What is far less credible is the claim by all the witnesses in this matter on behalf of the defendant that they observed no such injuries, did not inflict them, and, despite his being in their custody, know nothing whatsoever about how the claimant could possibly have sustained them.

Dr. Carl Ferdinand

129. While Dr. Ferdinand stated that he would not be able to say how the Claimant received any of the injuries he observed, he was able to say "m*ost likely these injuries were produced by a blunt instrument using moderately severe force"* and were unlikely to have been self inflicted.
The fact is that on a balance of probabilities the evidence supports that they were inflicted by the officers as the Claimant described, in the manner described. And I so find.

130. In light of the claimant's proven visible and observable injuries the evidence of all the defendant's officers who testified to the effect that that at no time, while the Claimant was in police custody, did they observe any visible injuries on the Claimant, or that the Claimant was ever assaulted by any police officer by them or in their presence, is simply not credible.

131. It was submitted*" that the Claimant's evidence regarding his purported assault at the hands of various police officers is not to be believed. The Claimant's* ***medical evidence cannot provide any indication as to when his injuries were received and how***. Moreover, *the Defence has put forward* ***cogent alternative evidence*** *which suggests that the Claimant was not suffering from any visible injuries, as he claims, when taken to the San Fernando General Hospital for examination. The Claimant's* ***weak insinuation that the medical doctor*** *who examined him at the hospital was somehow in cahoots with abusive officers is manifestly unreliable*; *this especially so in the face of* ***the averments of all police officers*** *called as witnesses, including those of a* ***very senior officer*** *(Inspector Smith)"*

132. In fact those are matters which all go towards demonstrating how serious was the attempt to cover up the horror of what occurred in this case.

"Medical evidence cannot provide any indication as to when his injuries were received and how"

a. The claimant's medical evidence, coming from an independent medical professional, in practice since 1978, is credible. While it cannot establish exactly how the claimant's injuries were sustained, it definitely establishes that shortly after his release from police custody he was suffering from the injuries of which he complains, that they were visible and painful injuries, and that they could not have been self inflicted.
b. The only other possible inference, that they were somehow inflicted coincidentally on the claimant by unknown third parties and blamed on the defendant's officers, is too ludicrous to contemplate, and the defendant has never sought to suggest this.
c. On a balance of probabilities the injuries complained of, and the positions thereof demonstrated to the court, are consistent with the manner in which the claimant has described they were inflicted.

*"**Cogent alternative evidence**"*

133. The cogent alternative evidence that the defendant refers to turns out to be a medical report from a doctor at San Fernando General Hospital who was not called to testify, and the evidence of the police officer who carried the claimant to the hospital. He sought to suggest that, consistent with the alleged diagnosis in the medical report that the claimant was only suffering from an asthmatic attack, and his other injuries, if sustained at all, were not observed at the hospital by that other independent medical professional.

Insinuation that the medical doctor in collusion with police

134. No credible explanation was provided for the failure to call this unnamed doctor to confirm whether, if he had observed injuries on the claimant he would have included these in his report, in addition to the diagnosis of "asthma", and that the omission to detail any such injuries meant that there were none to be observed. While the burden of proof is on the claimant to prove his injuries, he has amply done so, and the defendants have utterly failed, whether by this cogent alternative evidence or otherwise, to have rebutted it or established the contrary.

The averments of all police officers

135. The evidence or "averments "of the several police officers involved, and their all too conveniently consistent testimony reeks not of consistency and truthfulness, but rather of complicity, conspiracy, and untruthfulness .

136. The averments of all police officers called as witnesses, including those of a **very senior officer.** While one would have expected that the evidence of the **senior officer** proffered as proof of the credibility of the other junior officers involved in this exercise, would have been more reliable and believable, it was not.

137. His failure to observe the claimant's injuries, and his presence on the exercise on Monday July 7th 2008 when the claimant was assaulted and brutalized on a lonely trace, unfortunately renders his evidence just as unreliable and untrustworthy as theirs. In fact more so, since, it is alleged that Officer Smith was a direct and active participant in assaulting the claimant with a baton, while the claimant was handcuffed.

138. Even if he did not participate, he confirmed that the vehicles in which the party travelled never separated. He therefore must have been present while the claimant was being assaulted on that occasion.

Detention of vehicle TBP2969

139. The said vehicle has been detained by Police Officers in the absence of evidence of ownership by the Claimant. They contend that therefore the Defendant is justified in continuing to detain this vehicle pending further investigations. However after more than 5 years those alleged further investigations do not appear to have been a priority.

LAW – DETENTION OF THE VEHICLE

140. In the decision of the Privy Council in **Jaroo v The Attorney General of Trinidad and Tobago** [2002] UKPC 5, per Lord Hope, their Lordships considered various authorities in relation the police detention of a motor vehicle suspected to have been stolen, as follows:-

[20] *In Webb v Chief Constable of Merseyside Police [2000] QB 427, [2000] 1 All ER 209, the police sought to retain sums of money which had been seized on suspicion that they were the proceeds of drug trafficking. It was held that, even although it was established on balance of probabilities that the money was the proceeds of drug trafficking, this was no defence to the plaintiffs' claims as they could rely on their right to possession as against the police. May LJ said at p 448:*

"As to entitlement to possession, there is an instructive analysis in the decision of the Supreme Court of Victoria in Field v Sullivan [1923] VLR 70. The essence of an extended passage in the judgment of Macfarlan J, at pp 84-87, is that if goods are in the possession of a person, on the face of it he has the right to that possession. His right to possession may be suspended or temporarily divested if the goods are seized by the police under lawful authority ***. If the police right to retain the goods comes to an end, the right to possession of the person from whom they were seized revives. In the absence of any evidence that anybody else is the true owner, once the police right of retention comes to an end, the person from whom they were compulsorily taken is entitled to possession****."*

[21] *In Costello v Chief Constable of Derbyshire Constabulary [2001] EWCA Civ 381, [2001] 3 All ER 150, [2001] 1 WLR 1437, which was concerned with facts not dissimilar to those in this case, the police seized a motor car which they believed was stolen and retained it as its owner was unknown. The person from whom it had been taken raised an action against the Chief Constable for delivery up and damages for unlawful detention of the car. It was held by the Court of Appeal that, save so far as legislation otherwise provided,* ***possession****, whether obtained lawfully or not,* ***vested in the possessor a possessory title which was good against the world save anyone setting up or claiming under a better title*** *and that, although he at all times knew that the car was stolen, the claimant was entitled to an order for its delivery and to damages. Lightman J, with whom Keene and Robert Walker LJJ agreed, said at p 1450D that possession is entitled to the same legal protection whether or not it has been obtained lawfully or by theft or by other unlawful means. The decision in Webb v Chief Constable of Merseyside Police [2000] QB 427, [2000] 1 All ER 209, was followed and applied.*

[22] *The appellant asserted in his constitutional motion that he was being deprived of the use and enjoyment of "his" motor car, and he claimed in his affidavit that he was the owner of it.*

But, as the judgment of Macfarlan J in Field v Sullivan indicates, it was sufficient for the purpose of his constitutional right that it was in his possession when it was taken from him by the police. ***It is the right to possession, not the right of ownership only, that is protected by s 4(a)****. The fact that the vehicle was in his possession when it was taken from him is not in dispute. The fact that he handed it over to the police for further inquiries did not deprive him of his possessory title to the vehicle. In this situation their Lordships consider that the right in s 4(a) on which the appellant founds is in principle a right that he was entitled to assert in relation to the motor car.*

[26] *In Ghani v Jones [1970] 1 QB 693, [1969] 3 All ER 1700, 708 of the former report Lord Denning MR said that the freedom of the individual, whose* ***privacy and possessions were not to be invaded except for the most compelling reasons,*** *had to be balanced against the interests of society at large in finding out wrongdoers and repressing crime. He then set out at p 708-709 of the former report the following propositions which explain where the balance is to be struck:*

> *"Balancing these interests, I should have thought that, in order to justify the taking of an article* ***when no man has been arrested or charged****, these requisites must be satisfied:*
>
> *First: The police officers must have reasonable grounds for believing that a serious offence has been committed – so serious that it is of the first importance that the offenders should be caught and brought to justice.*
>
> *Second: The police officers must have reasonable grounds for believing that the article in question is either the* ***fruit of the crime*** *(as in the case of stolen goods) or is the instrument by which the crime was committed (as in the case of the axe used by the murderer) or is material evidence to prove the commission of the crime (as in the case of the car used by a bank raider or the saucer used by a train robber).*
>
> *Third: The police must have reasonable grounds to believe that the person in possession of it has himself committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must be quite unreasonable.*

Fourth: ***The police must not keep the article, nor prevent its removal, for any longer than is reasonably necessary to complete their investigations or preserve it for evidence****. If a copy will suffice, it should be made and the original returned.* ***As soon as the case is over,*** *or it is decided not to go on with it,* ***the article should be returned****.*

Finally: The lawfulness of the conduct of the police must be judged at the time, and not by what happens afterwards."

"Their Lordships consider that these observations explain what is meant, in the circumstances of this case, by the constitutional guarantee of due process. It means that the following requisites had to be satisfied by the police in order to justify their continued detention of the motor car. ***First, they must have had reasonable grounds when they insisted on detaining it for believing that it was a stolen vehicle. Second, they had to be in a position to show that its continued detention was reasonably necessary to complete their investigations or to preserve it for evidence.*** *As Roskill LJ said in Malone v Metropolitan Police Comr [1980] QB 49, 70,* ***there is no general power in the police, when they have lawfully seized property which is thereafter not the subject of any charge*** *and* ***is clearly shown not to have been stolen****, to* ***retain*** *that property as against the person entitled to possession of it* ***against some uncertain future contingency****. As he put it, the* ***police who wish to continue to detain the property must be able to justify their retention of it upon some ground which is clearly ascertainable.****" [****Para 27*** *all emphasis added.]*

141. Although the issue was addressed there from a constitutional perspective, the issues of right to possession and the relative strength of titles are equally applicable to the instant situation. Obviously, if in fact the vehicle were a stolen one, the plaintiff had no right to possession of it. But if after more than 5 years the police have not established that it is a stolen vehicle, then in the absence of evidence that there is a person with a right to it greater than that of the claimant, it must be returned to him. An allegation that the chassis appears to have been tampered with is not the same as establishing as a fact that it is a stolen vehicle.

142. Furthermore, even assuming the vehicle to have been unlawfully obtained, (and it must be emphasized that this has not been established), while the "true owner" may have a better right

than the claimant, the police themselves do not, and therefore they do not have the right to retain it.

143. In any event the police had ample time to establish that the vehicle was unlawfully obtained, or to ascertain "the true owner" if that were the case. They have failed in over five years to do so.

144. It was submitted that the police were entitled to retain the vehicle as

a. the Claimant has failed to produce any cogent or reliable evidence that he is the owner of t the said vehicle,

b. that under cross examination he admitted that he failed to register the vehicle in accordance with the mandatory provisions of **The Motor Vehicle and Road Traffic Act Chap 48:50**.

c. that the name of the purported previous owner from whom he allegedly purchased does not appear on the Certified Copy for the vehicle.

d. that while the police only have evidence that the vehicle has been tampered with, they have no evidence of a satisfactory nexus between the vehicle and the Claimant's ownership of it.

145. This is not sustainable in light of the authorities. The claimant's right to possession – his "possessory title" has not been rebutted by evidence of superior title by anyone else.

The police do not have any such superior title. Further they cannot now claim to retain it on the "uncertain future contingency" that they may yet establish such superior title.

146. In **Nigel Lashley v Ag HC 1274/2009** delivered 16th April 2012 – (upheld by the Court of Appeal in CA Civ 267/2011 on 25th August 2013), there was evidence as to the actual owner of the stolen vehicle, which justified the actions of the police in that case in not only detaining the vehicle, and in not returning it to the claimant, but in delivering it to the person who had **established** his claim to legal ownership. That was a superior claim to that claimant's mere possession.

147. In addition, in that case proper and effective investigations had been conducted, as found therein.

*The Stolen Vehicle Squad, Port of Spain was contacted to assist with finding the current owner of the vehicle in that **case** and they revealed that the vehicle belonged to a Kenrick Davis.*

*On or around the 23rd December, 2008 the motor vehicle PCA 2196 was returned to Kenrick Davis, after he **presented his certified copy**, explained that the vehicle was in fact stolen on 17th June, 2007 **and demonstrated** to Sergeant Smith that underneath certain stickers on the glass of the vehicle was **the inscription of the chassis and engine numbers of the vehicle**.*

***Police Sergeant Smith also observed that the chassis and engine numbers of the said vehicle matched those on the certified copy for PCA 2196.** A statement was taken from Kenrick Davis and he was asked to sign for receipt of the vehicle which was then returned to him.*

148. **Nothing resembling that has taken place in this case.** Save for the suggestion that the chassis number had been tampered with, there was no properly concluded investigation to confirm that the instant vehicle had actually been stolen; far less was an alternative owner with superior legal title to the claimant's possessory title identified.

ALLEGED ILLEGAL SEARCH

149. The officers were in possession of a search warrant which covered the tenant. The alleged tampering of the chassis number on one of the claimant's vehicles within the compound justified a search of the yard and the premises of the tenant. It would have covered the search of the claimant's vehicle in the compound, as there is no evidence that the compound was segregated. It did not cover a search of the claimant's living accommodation upstairs.

150. On Monday July 7th the police had a search warrant which covered the claimant's premises at Boo Settlement Rio Claro. Whether the warrants were issued within the jurisdiction of the Justice of the Peace is a matter that is not addressed in this decision, as even if the searches

were illegal as contended, this aspect of the claim would be subsumed within in the larger issues of assault, unlawful detention and matters of aggravation surrounding the entire incident.

SPECIAL DAMAGES

151. Special damages must be specifically pleaded and proven. Such proof has not occurred, The claimant states in his amended statement of case and witness statement that these tools were valued at $24,500.00. It is unnecessary to find whether his assertion that these tools were removed from his home as claimed has been proven, as he has failed to produce any evidence to substantiate this claim.

152. $18,000.00 of this claim was in respect of allegedly new items. The proof of the value of at least those items could have extended beyond mere assertion, for example Price lists, quotations, or receipts for having (recently) purchased these allegedly new items. Even if the removal of these items had been established, the deficiency in the proof of their value would not justify any award.

Loss of use

153. This claim is misconceived. The claimant states that he had purchased the vehicle as damaged and intended to repair and sell it. The vehicle could have been used on the road once the transfer of its registration passed the scrutiny of the Licensing Department. The vehicle would have needed to have insurance coverage and, as a precondition thereto, satisfactory proof of ownership.

154. It does not appear on the evidence however that there was any use on the public roads that the vehicle could have been lawfully put to without these. Neither is it asserted that the claimant was actually using the vehicle, or even that the vehicle could have been used. The claimant has not claimed loss of the expected profit on the resale of the vehicle. His measure of damages, should the vehicle be returned to him, would be the loss occasioned by his profit, if any, having being deferred since 2008. As there is no evidence of what that profit could have been, or what is the extent of any depreciation, any loss under this head is speculative, and can only be nominal. Nominal damages are therefore awarded for the detention of the vehicle in the sum of $5000.00.

DAMAGES FOR ASSAULT - QUANTUM

COMPENSATORY/GENERAL DAMAGES

155. The factors which are to be taken into account by a Court in the assessment of general damages for personal injuries have been long settled by the Honourable Wooding C.J.in the **Cornilliac v St. Louis** (**1965) 7 W.I.R. 491** as follows:-

(i) The nature and extent of the injuries sustained.

(ii) The nature and gravity of the resulting physical disability.

(iii) The pain and suffering which had to be endured.

(iv) The loss of amenities suffered.

(v) The extent to which, consequentially, the (claimant's) pecuniary prospects have been materially affected.

The nature and extent of the injuries suffered

156. The injuries actually sustained do not appear to have had a long term physical impact. There were no fractures. They appeared to be mainly soft tissue injuries, with no permanent residual effects or resulting disability, and no effect on pecuniary prospects.

157. In this regard they are quite similar to those sustained by the claimant in **Ijaz Bernadine v The AG** HC 2956/2010 delivered 2nd October, 2013. Accordingly the same authorities that are referred to in that case as set out hereunder, which justified the award of **Fifty five Thousand dollars ($55,000.00)** would be applicable here. That award also included matters of aggravation, again similar to those in the instant case.

Pain and suffering

158. I accept that the pain and suffering that the instant Claimant would have experienced would have been significant, as is evidenced from his witness statement.

Judicial Trends

159. In **Kenton Sylvester v The Attorney General et al**, **H.C.A. No. 4025 of 2002** delivered July 31st, 2002 the Honourable Justice Christopher Hamel Smith (as he then was) was called

upon to assess damages to the Plaintiff in circumstances where the Plaintiff had undergone a vicious attack at the hands of several police officers, who apparently were under the impression that he was a bandit, rather than the victim of bandits.

160. The Plaintiff in that case suffered serious personal injuries as result of the attack – including a fractured radius and ulna, 8 fractured ribs, broken upper humerus, punctured lung, contused liver, loss of consciousness, and multiple abrasions. Surprisingly, he made an almost complete recovery. The Plaintiff was awarded the sum of **$200,000.00** general damages. It included an element for aggravated damages.

161. In **Sylvester,** immediately after the attack the ambulance came to the scene and he was taken to the hospital very close by. He was hospitalized for 12 days including 8 days in the intensive care unit.

162. The injuries suffered by the Claimant were definitely not as severe as those suffered by Sylvester.

163. **Martin Reid v The Attorney General, C.V. 2006-02496 delivered June 6 2007** per the Honourable Justice Jones. Reid sustained injury after an assault at the hands of several prison officers. The injuries received by the instant Claimant were less severe than the injuries of the Claimant Reid. They included a **broken finger, cuts to the back of his head, and bruises**. In the case of Reid he was left unattended for more than 2 days before being taken to hospital, though he had been taken to the infirmary officer right after the attack. His wounds continued to bleed. When he was taken to the hospital he was **hospitalized for 5 days**. He suffered **post concussion syndrome** from the blunt head trauma and he still suffered blackouts, pain and headaches at the time of assessment. The Court awarded the Claimant Reid the sum of $**65,000.00** as general damages for the injuries suffered and $45,000.00 as exemplary damages. Those injuries appear to have been of greater severity than those of the instant claimant.

164. **Thaddeus Bernard v Nixon Quashie, Civil Appeal No. 159 of 1992** - delivered **October 21 1998** per the Honourable Chief Justice De La Bastide. In **Bernard** the Respondent was beaten by the Appellant who was an estate constable at the Tobago Airport. The Respondent was

assaulted at the Tobago Airport by the Appellant initially holding on to the collar of the Respondent. Another officer then held down the Respondent's hands behind his back at which time the Appellant struck the Respondent a few times in his face. As a result the Respondent **suffered lacerations to the face**. The lacerations bled quite profusely. He was taken to the hospital for treatment.

165. The trial judge awarded the Respondent the sum of $78,000.00 in compensatory damages and $12,000.00 in exemplary damages. On appeal to the Court of Appeal the general damages were reduced to $40,000.00, as $78,000.00 was held to be a wholly erroneous estimate of the damage, in view of the then existing range of awards of that type, (up to $37,000.00). The award of exemplary damages was upheld.

166. The injuries suffered by the Respondent in **Bernard** were similar to the recorded injuries suffered by the Claimant. The injuries of the Respondent in Bernard, the nature of the assault upon him, in terms of its viciousness and duration, and the circumstances of humiliation are less serious when compared to the situation of the Claimant herein. That award was made 15 years ago.

167. **Lester Pitman v The Attorney General C.V. 2009-00638** dated 18th December 2009 per the Honourable Justice Jones. In the case of Pitman the Claimant was beaten in the condemned division of the Port-of-Spain by prison officers, two using closed fists and one using his riot staff. The injuries suffered by Pitman as a result of the attack consisted mainly of soft tissue injuries and, like the injuries suffered by the Claimant, did not involve fractured bones,. The Honourable Justice Jones awarded Pitman the sum of $**90,000.00** general damages and $30,000.00 exemplary damages.

168. **Morris Kenny v The Attorney General H.C.A. T-62 of 1997** – delivered March 11 2002 per the Honourable Justice Tam. The Plaintiff in this case was beaten with a cable about his body in a prison setting and suffered severe back pains. The Plaintiff also suffered many abrasions about the body and had welt marks as a result of the beating. The Court awarded **Kenny** the sum of $**50,000.00** general damages to take into account aggravating factors. Exemplary damages were awarded in the sum of $**60,000.00.**

169. **Lincoln Marshall v The Attorney General, CV 2009- 03274 - delivered October 1 2010** the Honourable Madam Justice Rajnauth-Lee. On or about the 22nd April 2007 a Prison Officer used obscene language towards the Claimant. The Claimant responded to the officer similarly. The Claimant was then assaulted and beaten by three officers. The injuries that were suffered by Marshall were as follows:-

(i) The Claimant lost two teeth and had four of his other teeth broken.
(ii) Welt marks about his body.
(iii) Tender swelling about his entire body.
(iv) Tender haematomas about the Claimants body.
(v) Intense swelling of the face and jaw area.
(vi) Inability to eat food and difficulty in talking.
(vii) Bleeding from the jaw area.
(viii) Soft tissue injury about the body.

170. On October 1 2010 Madam Justice Rajnauth Lee awarded the Claimant the sum of $100,000.00 in general damages, including aggravated damages, and $50,000.00 in exemplary damages.

171. Taking into account all of the above , including the trend discernible in awards of the courts for similar soft tissue injuries inflicted in comparable aggravating circumstances, the sum of **Fifty Five Thousand dollars ($55,000.00)** is awarded to the Claimant inclusive of Aggravated Damages for assault and battery.

FALSE IMPRISONMENT

172. In the **Handbook on awards for Damages for False Imprisonment and Malicious Prosecution, a publication of the Judicial Education Institute, at pages 22 -24** decisions **which** include awards for similar periods of detentions are summarised**.** Based thereon, and on the award of this court in **Bernadine** an award of $45,000.00 falls within the range of awards for similar periods of detention to that of the instant claimant.

AGGRAVATED DAMAGES

173. Under this head of damages the Claimant is entitled to recover damages for mental suffering inflicted on the claimant as opposed to the physical injuries he may have received. Under this head are included such matters as the affront to the person's dignity, the humiliation he has suffered, the damage to his reputation and the standing in the eyes of others – **per Chief Justice de La Bastide in Thaddeus Bernard v Nixon Quashie at page 4.**

174. These are matters which may be affected by the manner in which the assault was carried out by the officers. The manner and the circumstances in which the attack was carried out must obviously have been humiliating to the Claimant. It was carried out with reckless and callous disregard as to whether force was even required to subdue the claimant in the circumstances then existing.

175. In addition there are the following additional matters that this court considers must be relevant:-

i. The mental torment that the Claimant would have experienced throughout the entire ordeal, and in particular the anguish, helplessness, despair, and fear, given the ongoing delay in charging him or releasing him, that he may not have been released,
ii. The repeated violence meted out to him by the officers while he remained in their custody, and control.
iii. The humiliation of being assaulted and battered, even while in handcuffs.
iv. The apparent condonation of the use of excessive force upon him by a significant portion of the officers with whom he came into contact.
v. The fact that he had done nothing to deserve such treatment.
vi. The continuation of his trauma in the ongoing scenario of an interrogation, confinement and custody, the fruitless search exercise, and inexplicable delay in bringing him before a magistrate.

EXEMPLARY DAMAGES

176. The House of Lords in **Rookes v Bernard** [1964] AC 1129 recognized two categories of cases in which an award of exemplary damages would be appropriate at common law, including

where there is evidence of "oppressive, arbitrary or unconstitutional action by the servants of the Government."

177. **In Bernard v Quashie (supra) the Honourable de la Bastide CJ** stated "*the function of exemplary damages is not to compensate but to punish and deter*." In **Takitota v AG of the Bahamas**, **Privy Council Appeal 71 of 2007** delivered March 18 2009 it was stated:

> ***[12] The award of exemplary damages is a common law head of damages, the object of which is to punish the Defendant for outrageous behaviour and deter him and others from repeating it****. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or unconstitutional action by the servants of the government, the ground relied upon by the Court of Appeal in the present case. It serves, as Lord Devlin said in Rookes v Barnard [1964] AC 1129 at 1223, [1964] 1 All ER 367, [1964] 2 WLR 269, to restrain such improper use of executive power. Both Lord Devlin in Rookes v Barnard and Lord Hailsham of St Marylebone LC in Broome v Cassell & Co Ltd [1972] AC 1027 at 1081, [1972] 1 All ER 801, [1972] 2 WLR 645* ***emphasised the need for moderation in assessing exemplary damages****. That principle has been followed in The Bahamas (see Tynes v Barr (1994) 45 WIR at 26), but in* ***Merson v Cartwright and the Attorney General*** *[2005] UKPC 38, [2006] 3 LRC 264 the Privy Council upheld an award of $100,000 exemplary damages, which they regarded as high but within the permissible bracket.*

178. A matter which supports an award under this head of damage must include the urgent need to deter such conduct before it becomes engrained as a result of apparent condonation, and before it results in serious personal injury or loss of life.

179. The instant assaults were similar to that in **Goring v AG (CV2010-03643 delivered on August 3rd 2011**) in that in **Goring** (supra) the assault was characterized by brutality, verging on the sadistic, directed at a prisoner in circumstances where he was helpless and outnumbered.

JUDICIAL TRENDS - AWARDS OF EXEMPLARY DAMAGES IN CASES OF ASSAULT AND BATTERY BY OFFICERS OF THE STATE

180.

i. In **Martin Reid** v **The Attorney General** the Honourable Justice Jones awarded the sum of **$45,000.00** as exemplary damages.

ii. In **Abraham** the Court awarded the sum of $**50,000.00** as exemplary damages.

iii. In **Kenny** the Honourable Justice Tam awarded the sum of $**60,000.00** as exemplary damages.

iv. In **Sean Wallace** the Honourable Justice de Vignes awarded the sum of $**70,000.00** as exemplary damages.

v. In **Ramanoop,** the Honourable Madam Justice Rajnauth Lee, after the matter was remitted by the Privy Council, awarded the Claimant the sum of **$60,000.00** as vindicatory damages for the assault and beating of the Claimant. Vindicatory damages are different from exemplary damages, and are subject to constraints on quantum, in the manner explained by the Privy Council in **Ramanoop**.

NEED FOR MODERATION

181. The need for moderation must be borne in mind when assessing exemplary damages. That must be balanced with the need to send a message of condemnation of the behaviour involved and to deter its recurrence.

182. While various courts have been sending the message of condemnation while exercising moderation in the awards for exemplary damages the message is clearly not resulting in deterrence of such conduct by servants or agents of the State. In fact it appears to have been ineffective in deterring such conduct.

183. The approach of marginally and incrementally increasing the awards for exemplary damages appears to have been ineffective in sending the message, if it even needs to be sent, that such conduct is an abuse of power, is unlawful and oppressive, and will entitle the victims, if they survive, to substantial compensation.

184. It may be that the emphasis on moderation is being misconstrued as a mere slap on the wrist, resulting in recurrences.

185. The fact is that the pronouncements by the courts set out above appear to have been ineffective in preventing the repetition of behaviour similar to that here complained of, and allegations of assault at the hands of servants or agents of the State continue to be made.

186. Further the signals from the courts via awards of exemplary damages at previous levels have been ignored. The Court has a discretion with regard to the quantum of an award of exemplary damages. The courts are not unmindful of the fact that police officers have to face dangers in a real world environment. The recognition and enforcement of protection of citizens' rights is not based on any artificial view of those conditions, nor tainted by any form of sentimentality. However this is no justification for behaviour such as has occurred here, where a citizen is subjected to arbitrary and excessive brutality, at the whim of those entrusted to protect and serve.

187. Failure to condemn such behaviour in the strongest possible terms amounts to countenancing and condoning it. This is incompatible with the duty of courts in a civilized country which subscribes to the recognition, protection and enforcement of basic standards of treatment of its citizens.

188. In those circumstances it is the courts' duty to set an award of exemplary damages in an amount that may give pause to officers contemplating such abuse in future, and to their employers who do not take steps to hold such officers accountable.

189. If the mechanism of moderate awards of exemplary damages is ineffective, then increasing the strength of that signal by increasing the quantum awarded as the exemplary component of such award may be required.

190. In **Owen Goring v The Attorney General of Trinidad and Tobago CV 2010-03643** the court made an award of $100,000.00 exemplary damages which exceeded those in previous local authorities. It did not exceed the amount of such an award in **Merson v Cartwright and the Attorney General** [2005] UKPC 38, [2006] 3 LRC 264, where the award, (apparently of

vindicatory damages), was $100,000.00, which award was left unchanged on appeal to the Privy Council. The court did so based on an analysis of the trend of awards, and a recognition that the signal that was being sent by courts that abuse by prison authorities of prisoners in their care was at that time continuing unabated. The need to increase the strength of that signal was clearly illustrated by the facts of that matter.

191. That is not a matter about which a court should be hesitant. The courts cannot countenance such behaviour. The courts have a duty to the citizens of this country to uphold their rights where they have been infringed. They have a duty to accompany their findings with appropriate and effective remedies, and to do so without fear of favour. If the courts do not attempt to uphold citizen's rights in such circumstances one may ask, who will?

192. The court cannot effectively signify displeasure at such conduct, yet make simply a token, or worse yet, no award of exemplary damages, as this court was invited by the defendant to do. A token award of exemplary damages, even with a compensatory aspect of damages which includes aggravated damages, risks being an exercise in futility. A token, slap on the wrist type award of exemplary damages, sends the opposite signal to that required of an award of exemplary damages.

193. It sends the signal that although assaults by the police will attract an award of damages if proved, somehow such assaults will not be sufficient to attract the strongest possible condemnation, as reflected in an appropriate award of exemplary damages. An excessively low award of exemplary damages, or far worse, no award of exemplary damages, suggests that the court will condone such high handed and brutal behaviour, unlawful as it is, by tempering signals of the society's displeasure, reflected via the court.

194. The conduct of the officers in this case needs to be held up to scrutiny. That conduct is similar to that of the officers, albeit at another institution, in the Goring case. It includes

a. assaulting a citizen in a brutal manner causing him to sustain painful injuries.

b. failing to recognise that there was no absolutely lawful justification for such behaviour

c. carrying out, and in the case of those not actually involved in the assault, permitting, such conduct directed at the claimant who was in their custody and defenseless.

d. it constituted an abuse of the power conferred on the officers involved.
e. in light of the express finding that the claimant's injuries were **visible**, even to those who had not been present and observed them being inflicted, it clearly and necessarily involved being consistently and repeatedly untruthful to the attorneys for the State in the preparation of their defence and their witness statements, and to the court. It involved a cover up among all the officers in that party.

195. The award of exemplary damages in **Goring** was high, as it deserved to be. The conduct in that case was shocking, violent, and disgraceful. The same applies here. The conduct of the officers in this case in assaulting the claimant on repeated occasions, and then consciously and deliberately taking him to a lonely trace in the countryside while allegedly pursuing inquiries, where he was struck repeatedly without any lawful justification, clearly falls within the category of conduct that should attract an award of exemplary damages.

196. The conspiracy that led to all the officers who testified, swearing on oath either that they had not themselves inflicted injury on the claimant , observed the infliction of injury on the claimant , or observed the clearly visible injuries on the claimant at any time that he was in police custody, cannot be rewarded by a nominal award of exemplary damages .

197. The signal that needs to be sent is that this is behaviour that is absolutely unacceptable in a society which has respect for the fundamental human rights of its citizens, and that the courts will uphold those rights when they are clearly, as in this case, demonstrated to have been infringed.

198. An award of exemplary damages of $100,000 was made in **Owen Goring v The Attorney General** CV No. 2010-03643 delivered 3rd August 2011.
An award of $90,000.00 – was made in **Bernadine**. The difference in the awards was that in the latter, the situation was an excessive use of force in the heat of the moment. In the former, as in the instant case, the assault was not even explicable as being an overreaction in the heat of the moment.

The suggestion that those awards were excessive is rejected. The Privy Council in **Merson v Cartwright and the Attorney General** [2005] UKPC 38, [2006] 3 LRC 264 accepted an award of $100,000.00 for vindicatory damages.

199. The courts have a responsibility, while demonstrating restraint in making awards of exemplary damages, to

a. recognise the trends in such awards by the Judges of the Supreme Court,

b. take into account all the circumstances and factors that go into such awards,

c. refrain from undermining and reducing to irrelevance the concept of exemplary damages by imposing on themselves artificial constraints, not justified in law, on their discretion to do so.

200. The High Court has a duty to consider the circumstances, and then, unapologetically perform its role, function and duty to **all** citizens, by making a suitable award of exemplary damages Inherent in a merely token award of exemplary damages, would be a subtle signal that unprovoked violence by police officers, resulting in painful injuries, subsequently sought to be covered up by them, and furthered by perjury before the High Court, is not all that unacceptable. However, the conduct here was reprehensible, unlawful, and falls clearly within the category of high handed action by servants or agents of the State.

201. An award of exemplary damages in a sum less than $90,000.00 would risk reducing to irrelevance the purpose of exemplary damages. Such an award would not do violence to the concept of restraint in such awards, yet is more likely to achieve the purpose of this aspect of an award.

202. The purpose of the exemplary component of an award has little to do with compensating a claimant – that has already been addressed by the purely compensatory aspect of an award. It is directed at condemnation of actions, behaviour and conduct of the servants or agents of the State – action that is high handed and oppressive - that must be highlighted and prevented, lest it be condoned, encouraged, systematized and perpetuated.

203. The risk of sending the subtle signal that the court does not consider such conduct to be as reprehensible as it actually is, would be far more detrimental than any possibility that the award might be considered excessive. Reticence or hesitation in increasing the strength of the signal that needs to be sent may result in recurrences.

204. In the instant case the quantum of the compensatory aspect of the damages, including the matters in aggravation has been taken into account. The balancing act, preserving the need for moderation, with the need to send a message of deterrence, may yet be accomplished by an award of exemplary damages, in this case of $90,000.00. This is $10,000.00 less than the award of this court in **Goring**. The quantum of exemplary damages required to achieve the purpose of exemplary damages, in particular, deterrence, is accordingly set at **$90,000.00.** In the circumstances an award of $90,000.00 is made in respect of the exemplary damages component of an award.

DISPOSITION

205. Damages are assessed as follows**:-**

IT IS ORDERED THAT:-

(i) The claimant be awarded general damages for false imprisonment for a period of 24 hours of his detention in the sum of $45,000.00.

(ii) The claimant be awarded general damages for assault and battery inclusive of aggravated damages in the sum of $55,000.00.

(iii) The claimant be awarded nominal damages in the sum of $5000.00 in respect of the continued detention of motor vehicle TBP 2969.

(iv) Interest is awarded at the rate of 6 % per annum on each of the above sums from July 4th 2012 (the date of the claim form).

(v) Exemplary damages are awarded in the sum of $90,000.00.

(vi) The vehicle TBP 2969 be returned within 7 days. In default the defendant is to pay to the claimant the sum of $55,000.00, -its value at the date of seizure -, with interest thereon at the rate of 6 % from November 2nd 2012 (the date of the amended claim form).

(vii) Costs on the basis prescribed by the Civil Proceedings Rules for a claim in the total of (i),

(ii), (iii), (iv), and (v).

(viii) Liberty to Apply.

Dated the 20th day of March, 2014

……

Peter A. Rajkumar

Judge