

THE REPUBLIC OF TRINIDAD AND TOBAGO

In the High Court of Justice

Claim No. CV2009-02427

NARINE RAMKISSOON

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Appearances:

Claimant: Cindy Bhagwandeem for the Claimant

Defendant: Alicia Baksh Clark instructed by Deborah Jean-Baptiste Samuel for
Defendant

Before The Honourable Mr. Justice Devindra Rampersad

Dated the 27th day of September, 2010.

JUDGMENT

1. The claimant, Narine Ramkissoon, was, at the material time, a self-employed proprietor and bartender. On 8 July 2005 at about 8 PM, the claimant says, in his statement of case, that he was at his home when police officers came to the said address and arrested him. He was taken to the Princes Town Police Station where he was placed in a cell until about 9 AM the next day when he was released without being charged. That is a period of about 15 hours and he said that he was not told the reason for his arrest during his imprisonment despite his request for same. The next day, at about 1 PM, he said that he was again arrested and taken to the same police station when he was placed in a prison cell and that on Monday, 11 July 2005, he was charged for breach of a protection order. This second period of incarceration lasted a total of over 48 hours continuously. At about 2 PM on Monday, 11 July 2005, evidence was led and he was found to be not guilty of the charge laid. The claimant says that the defendant had no reasonable and probable cause to arrest him and to detain him and as such the criminal charge laid against him was malicious. He said that as a result, he was deprived of his liberty and suffered both mentally and physically and included expenses in and about his defense in the magistrates' court. Those expenses comprised of the cost of his defense in the magistrates' court in the amount of \$600 and alleged loss of earnings amounting to \$1500.00.
2. The claimant complained that the conduct of the police officers was arbitrary, oppressive and/or unconstitutional and claimed aggravated and or exemplary damages. The grounds in support of his claim for these heads of damages were primarily that:
 - 2.1. He was falsely imprisoned for the two periods amounting to 13 hours on Thursday 8 July 2005 and 48 hours from Friday 9 July 2005 to Monday 11 July 2005;
 - 2.2. He was placed in a filthy holding cell which exuded a stench of human faeces and urine;
 - 2.3. He was denied and or refused his constitutional right to an attorney at law;
 - 2.4. He was never informed of his constitutional right to communicate with a friend or relative via telephone;
 - 2.5. He lost a considerable number of customers to his bar as a result of his malicious prosecution;
 - 2.6. He also relied upon his particulars of malice which included that there was no basis for the laying of the said charge and that no proper investigation

was conducted by the police officers involved and the particular officer operated on the basis that he was guilty (although no specifics were given for this allegation) and that he was reckless/negligent in the discharge of his duties as police officer.

3. Consequently, the claimant's claim against the defendant was for:
 - 3.1. Damages including aggravated and/or exemplary damages for malicious prosecution and/or for false imprisonment,
 - 3.2. Interest,
 - 3.3. Costs and
 - 3.4. Such further and/or other relief as the court may deem just.

There was no claim for constitutional redress as can be expected in this common law action since it is not a claim under part 56 of the CPR¹.

4. On 12 January 2010, judgment was entered for the claimant against the defendant in default of a defence in terms of paragraphs 3.1, 3.2 and 3.3 above. As a result, the question of the claimant being entitled to damages for malicious prosecution and false imprisonment is a settled one by reason of the judgment.
5. The only issue for determination therefore is the quantum of damages.
6. In the claimant's submissions, it is contended that the claimant is entitled to compensatory damages, aggravated damages, exemplary damages and the issue of vindictory damages was also raised. However, in light of the fact that this is not a matter involving the breach of the Constitution, I am of the view that vindictory damages is not applicable to the case before me. Further, there is no allegation of assault and battery by the police officers to exacerbate any award.

Aggravated damages:

- 6.1. Having regard to the authorities presented to me, I am of the view that there are aggravating circumstances to warrant an award of damages to include this head. When one looks at the sequence of events, it is clear that the matter was hopelessly, inadequately and improperly brought since the matter was dismissed on the very day that the charge was laid.

¹ See Civil Appeal number 113 of 2009: *Antonio Webster v The Atty. Gen.*

- 6.2. It seems to me that the officer involved merely wished to detain the claimant for some motive other than the responsible performance of his duties. It is unfortunate that the claimant was placed into the cell and spent a considerable amount of time without any charges being laid until the Monday morning.
- 6.3. The claimant was subjected to the deplorable conditions which, regrettably, seem to be common place throughout the prison system². I have also borne in mind the fact that the claimant was arrested at his home on Friday, 8 July 2005, released and then rearrested again at his home on Saturday, 9 July 2005. I have also taken into account that the claimant did not say in his witness statement that he was arrested in full view of his neighbors to have caused him embarrassment or disrepute but I have not disregarded the inescapable conclusion that there would have been some embarrassment arising out of police coming to his home resulting in his arrest on two occasions.

Exemplary damages

- 6.4. The case of *Rooks vs Barnard* [1964] 1 AER 367 establishes the categories of cases available in respect of this remedy at common law. I have found that the action of the police officer was oppressive and arbitrary in light of the fact that no credible evidence was provided since the magistrate dismissed the charge and found the claimant not guilty. What compounds matters is the fact that the officers' actions were never sought to be justified through the timely filing of a defence in this matter (or at all) – for whatever reason.

Special damages:

- 6.5. Even if the claimant is entitled to pursue a claim for special damages in light of the fact that no claim in respect thereof was made on the statement of case and claim form, I am of the view that he has not proven the sum he has claimed for loss of earnings. His allegation in this regard was a bald statement without the provision of empirical facts to substantiate his claim.
- 6.6. However, I share the defendant's concern about the fact that the special damages was not specifically sought and I therefore disallow any claim under this heading.

² See e.g. H.C.3178/2004; *In re the Constitution of Trinidad and Tobago. Between Edghill, Colin v McHoney, Carlo (The Commissioner of Prisons); The Attorney General of Trinidad and Tobago*

The Order:

7. Bearing in mind all of the circumstances and the fact that the claimant's evidence has gone unchallenged along with the submissions on the applicable authorities, the damages payable to the claimant are assessed as follows:
 - 7.1. Damages for malicious prosecution **and** false imprisonment including an element for aggravated damages is assessed in the sum of \$125,000.00;
 - 7.2. Damages for exemplary damages is assessed in the sum of \$15,000.00
 - 7.3. Prescribed costs are assessed in the sum of \$18,000.00 – being 60% of the total prescribed costs on \$140,000 amounting to \$30,000.

Post Script:

8. After the finalisation of the order in this matter, it was drawn to this court's attention by way of the Notice of Appeal that an order for interest on the awards granted was not made. A perusal of the statement of case revealed that a claim was made for interest but it is to be noted that neither side addressed this issue in their written submissions filed in these proceedings. Further, even upon delivery of the judgment by this court, no mention was made or query raised in relation to the issue of interest.
9. There is no doubt that the claimant would have been entitled to interest on his judgment and this court states that such an award of interest was inadvertently omitted in the final order.

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Devindra Rampersad
Judge