

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2017-01961**

BETWEEN

DARRYL RAMSAMOOJ

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Appearances:

Claimant: Abdel Mohammed

Defendant: Stefan Jaikaran and Sasha Sukram

Before the **Honourable Mr Justice Devindra Rampersad**

Dated the 10th April, 2019

JUDGMENT

1. On 15 April 2016¹, at around 1:15 PM², the claimant was accosted by four individuals who identified themselves as police officers and he was instructed by them that they were desirous of doing an inquiry and he was required to attend the Siparia Police Station with them. At the time, he was operating as a “PH driver” and one officer entered into his vehicle and accompanied him to the police station allowing him to drop off the other passengers in his motor vehicle before doing so. There was no suggestion that he had any choice in the matter so that for all practical purposes, having regard to the fact that WPC Aleena Charles stated in her witness statement that upon him being stopped, he was told that he was under arrest and informed of his constitutional rights and privileges and cautioned, it is safe to say that the claimant’s arrest commenced from that time.
2. At the station, he said that was informed that he was a suspect in a robbery. The defence disputed this and said that he was told of the reason for his arrest when he was stopped. Nothing turns on this however.
3. The claimant says that he was detained at the police station and was taken to the Siparia Task Force building at around 2:15 PM where he was placed in a holding cell which had no running water and was dark with a pungent scent of urine and faeces. He remained there until around 12:30 PM on 17 April 2016³ when he was taken out and placed in an identification parade. At around 1 PM, he said that he was removed from the parade and placed back into a holding cell from 1 PM to 4 PM that same day despite the virtual complainant saying that he was not the person. He was released at around 4 PM without being charged and was made to wait another two hours for his vehicle which was released around 6 PM.
4. The defence denied that he was taken to the Task Force building however no alternative version was presented and therefore, relying upon the Court of Appeal authority in Civil

¹ This was a Friday

² The defence said that it was at 2 PM

³ This was a Sunday

Appeal No. 244 of 2008: ***MI 5 Investigations Limited v Centurion Protective Agency Limited*** that bare denial amounts to a deemed admission since the effect of the bare denial would be to have the plea struck out therefore leaving the assertion as to the Task Force building and conditions of therein unchallenged. The allegations as to the length of his detention after he was cleared by the virtual complainant of being the person who robbed him was also not challenged.

5. The questions for determination on the issue of liability relate to whether there was reasonable and probable cause to arrest him and whether the police was justified in detaining him for 52 hours after that arrest.
6. Having regard to the evidence, the court is of the respectful view that the police did have reasonable and probable cause to arrest the claimant based on the information that they had. The description given by the virtual complainant along with the information which he had could arguably have applied to the claimant.
7. However, the court is of the respectful view that his detention for 52 hours was excessive in the circumstances.
8. The sole reason for his detention for that length of time was in order for the police to get into contact with the virtual complainant and have him attend for the purpose of the identification parade.
9. With respect to that detention, there is absolutely no information or justification before this court as to why the police could reasonably have detained the claimant after he was cleared by the virtual complainant at around 1 PM. Therefore, his continued detention until 4 PM was clearly unlawful and the continued detention of his vehicle until 6 PM without any reason whatsoever causing him to effectively have to remain in the station was also an unlawful act. Therefore, the court declares that that period of five hours from 1 PM to 6 PM on Sunday, 17 April 2017 was an unlawful detention of the claimant and his vehicle for which the defendant must be liable.

10. With respect to the remaining 47 hours, if one is to accept the police version as to the time that he was arrested on Friday 15 April, the reason given was that the police were unable to contact the virtual complainant.
11. In that regard, WPC Charles said that at the station, when the claimant was told that his description fit that of the suspect, he was silent the entire time and did not indicate to her that he was not the suspect that she spoke of all that he had any objections to have him placed on an ID Parade. In contrast, the claimant stated in his witness statement that he repeatedly denied the allegations of him having robbed someone and that he repeatedly said to the police officer that he had no knowledge of anything he was talking about and that he pleaded his innocence and told the officer that: *"You have the wrong individual"*. On a balance of probabilities, and having regard to the eventual outcome at the identification parade, it is difficult for this court to accept the version given by WPC Charles and the court finds that the account given by the claimant is more reasonable and more credible in light of the fact that he in fact was not the suspect. It is highly unlikely for a person who had not committed the crime to have sat in silence for 47 hours or at least during his being questioned when he would have known that he did not commit such a crime. As a result, the court finds WPC Charles to be unreliable and untruthful with respect to this allegation.
12. The other witness who was present for the arrest and who gave evidence in this matter, Acting Sgt. Rishi Ramsaran, did not give any evidence in relation to the inquiries at the police station between WPC Charles and the claimant. However, he did say that upon his arrest WPC Charles informed him that he was a suspect in the matter and, according to him, he said he could not recall if he said anything however he believed the claimant remained silent. Again, having regard to the matters set out in the preceding paragraph, the court prefers the evidence given by the claimant as being the more probable response.
13. The next aspect was with respect to the attempts by the police to contact the virtual complainant. There were no further inquiries being made of the claimant at the police

station and the sole reason for his detention after that interview with WPC Charles was to locate the virtual complainant and have him attend for the purpose of the identification parade. Before proceeding, it is important to consider the alleged crime involved.

14. According to WPC Charles, she spoke to the virtual complainant and reduced his report into the station diary entry No. 04 for Saturday, 12 March 2016. The entry states that at 4 AM the virtual complainant made a report that:

“... a male of mixed descent came to station and reported that around 3:40 AM on 12.03.16, he boarded a White B12, registration unknown at COORA Road, SIPARIA, driven by a man of mixed decent (sic) whom he knows by face, together with in other(sic) man of African descent whom he does not know and unable to give description seated in the back seat of seat (sic) vehicle, and on reaching the vicinity of La Pastora Street, both men announced a holdup and the driver ordered him out of the vehicle and he proceeded to rob him of \$180.00 TT currency.”

15. There was no allegation of it being an armed robbery but the fact of the virtual complainant being robbed in the circumstances which he described suggests a substantial amount of seriousness as the court can quite clearly see that the apprehension of the perpetrator of such a crime would make it safer for the traveling public, aside from the obvious distress and intimidation that the virtual complainant may have felt.
16. The court notes that there was no suggestion that any inquiries were made with respect to the claimant and his place of address and other stabilizing factors such as to make him a person who would be difficult to find. At least, there was no mention of that in WPC Charles’s witness statement. This, therefore, suggests that no attention was paid to the possibility of releasing the claimant, who was clearly operating in the full view of the police and the public, until such time as the virtual complainant could have been located.

17. On the other hand, the court notes the decision of the Board of the Privy Council in ***Ramsingh v The Attorney General***⁴ in which Lord Clarke said:

"[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.

[11] Although PACE does not directly apply in Trinidad and Tobago, s 37(2) reflects the correct approach at common law. Thus in the instant case the person who decided to continue the Appellant's detention pending the obtaining of a report upon the medical state of the victim must have had reasonable grounds for believing that the Appellant's detention without being charged was necessary pending the securing of that evidence."

18. Obviously, from the evidence, the officer thought that she had reasonable grounds for believing that the claimant's detention without being charged was necessary to secure evidence as to the identity of the perpetrator. That decision, though, had to be justified on a minute by minute basis.
19. According to WPC Charles, it was difficult to make contact with the virtual complainant. She said that she and Cpl. Sookoo had to go to his home which they did on several occasions but he was not home. He lived in a forested area she said. According to her, they went Friday evening and then Saturday afternoon and eventually met him on either Saturday night or early the Sunday morning. She said that the virtual complainant was

⁴ [2012] UKPC 16 at paragraph 10 and 11

informed that someone had been detained and that his assistance was requested and he was asked to go to the Siparia headquarters at 8 AM – 9 AM.

20. In her witness statement, she mentioned that the virtual complainant informed her that he had no phone that personally belonged to him⁵ and that he left a contact number for someone else but no one answered when she attempted to call him on 8 April 2016 after the initial report was made. However, no mention was made of any attempts to call that same person to get a message on to the virtual complainant after the claimant was arrested and detained and no explanation was given for that.
21. In cross examination, she admitted that she did not record her attempts to contact the virtual complainant in writing anywhere. As a result, there was no record available about this. She was obviously, then, relying upon her own credibility to substantiate her attempts. The court finds this unacceptable in light of the provisions of the Standing Order No. 17 (6)(e) which requires a police officer, amongst other things, to record and enter the whereabouts of personnel attached to the police station. Surely a record should have been made in the Station Diary when she went out on inquiries and with whom to corroborate what she was now saying. Further, there is no record even in the officer's pocket diary of anything in this regard, which is also required under the Standing Orders. She did not allege in her cross examination evidence or even in re-examination that she was not required to make such a record.
22. In terms of her credibility, the court had doubts. When she was cross-examined about the matters she stated at paragraph five of her witness statement with respect to the visiting of the scene of the robbery on 12 March, the receipt of information from one of the persons interviewed, the interview of other persons as well, the fact that the virtual complainant pointed out areas on the scene where the robbery happened and where the suspects drove off, the fact that there were buildings on the street but it was a sparse area, she admitted that she could not recall if she recorded any of this information in any

⁵ Paragraph six

document. In cross-examination, she went on to say that the visit lasted about 15 to 20 minutes but she could not recall if any record was made anywhere and she did not attach any evidence or statements from the persons so that the court could not verify if this information was true or not. This was obviously a point of unreliability. The court finds it difficult to accept that she would have remembered all of these details which transpired over two years prior without some sort of *aide memoire*. The failure to attach the same or to indicate how she remembered any of this cast serious doubts as to her credibility and the court finds her evidence to be unreliable, especially when the court considered the previous finding made above with respect to her interview of the claimant at the police station.

23. In support of her contention, Acting Sgt. Ramsaran said in his witness statement:

"11. ... I cannot recall whether WPC Charles didn't have his number or was not getting through when she called. I recall we made efforts that same Friday to locate Felix Reveiro and was unsuccessful. I had accompanied WPC Charles to the address provided by Felix Reveiro but he was not home and there was no one around to provide information on his whereabouts. We asked around and made inquiries and went into the quarry settlement which was a heavily forested area and sparsely populated. We had to get directions and at one point ended up by someone else's house. I remember being there and the person in that house directed us to another location. We went to the new location and observed the house but he was not home.

12. I am aware that WPC Charles and other officers also tried on the Saturday. I am aware that it was only until Saturday evening that communication was able to be made to Mr. Riveiro that police were looking for him. He was informed to come to the police station on the following day for the identification parade."

24. In cross examination, for the first time, Officer Ramsaran said that he believed that the fact that inquiries were made was entered in the Station Diary but that was not before the court and any such entries regarding what he said at paragraph 11 of his statement were not attached to his statement. Inherent in that admission was that there was a

record somewhere but it was not disclosed. Obviously, this was in contradiction to what WPC Charles said that she made no record.

25. Acting Sgt. Ramsaran came across more credibly than WPC Charles and the court therefore accepts that both he and WPC Charles went looking for the virtual complainant that same day but was unable to find him. Obviously, he could not speak of what happened on the Saturday of his own personal knowledge and no explanation was given as to what time of the day that efforts were made to locate the virtual complainant on the Saturday.
26. An opportunity was given to the parties to submit on the effect of the failure to provide any Station Diary and the court accepted the submissions on both sides. At the end of the day, however, the court notes that the failure of the police officers to produce any Station Diary extract in relation to the attempts made to locate the virtual complainant leaves it open for greater flexibility and manipulation in relation to what, if any, attempts were made. Whether this was by choice or by sheer negligence, the court deprecates the failure of police officers to do what they are mandated to do i.e. to maintain proper records by way of contemporaneous documents to substantiate their version of what has transpired. That, to my mind, is the purpose of these Standing Orders. As this court opined in its decision in ***Dillon Haynes v The AG*** CV 2008 – 01274:

“59. The police service in Trinidad and Tobago is also governed by certain Standing Orders. According to the very introduction to these Standing Orders, they serve as “blueprints for police operations and functions” and these Standing Orders seek to “provide a manual of general directions geared for the training and re-training of police officers in keeping with the changes attending society as a whole.” Section 1 of ‘Standing Order 2’ of the Police Service Standing Orders states that the Standing Orders are “general instructions issued by the Commissioner of Police from time to time and published for the efficient and effective administration of the service.” It is important to note that these Standing Orders are distinct from the Police Service Regulations which is annexed to the Police Service Act as subsidiary legislation. It seems to this court that while the Standing Orders are not in and of themselves legislation, the Police Service is bound to

operate within the confines of these orders for the reasons given in the introduction and set out above.”

[Emphasis added]

27. The failure of all of the officers in this matter to produce any written record in relation to controverted matters illustrates the window of doubt which is left for what this court can only consider to be “wobble room” i.e. an area of flexibility. Had the records been maintained as prescribed, or even produced in the case of Acting Sgt. Ramsaran, the court would have had a better understanding of exactly what steps were taken at the precise times. In the absence of that information, the court is left in what can quite possibly be viewed as a deliberate cloud and therefore the court can draw that negative inference from the failure to produce corroborating evidence. But that in itself, however, is not determinative of the credibility of the parties. The court must still assess the viva voce evidence of the parties.

28. In all of the circumstances, the court is of the respectful view that it does not accept the version given by WPC Charles that the first time that she could reasonably have contacted the virtual complainant was “*Saturday night or Sunday morning*” as she vaguely put it. The claimant’s liberty was at stake. He was being detained in deplorable conditions and there is no reason why he should have been kept there for any longer than would have been reasonably necessary for her to have secured contact with the virtual complainant. The deprivation of a person’s liberty, especially when it was later found out that he was innocent of the accusation, is something which must be jealously and scrupulously protected to the best of one’s ability especially in circumstances where the State is unable to provide basic amenities and living conditions for an innocent person. This continued failure of the State to treat persons fairly and humanely especially in cases of remand and inquiries such as in this case has been the subject of numerous judgments all of which have fallen on deaf ears. The court sees the treatment of a citizen of the Republic of Trinidad and Tobago in such an uncivilized manner and with such almost barbaric conditions as being nothing but a wilful neglect of basic human rights, especially in light

of the presumption of innocence. In this case, that presumption was affirmed yet this claimant endured 52 hours of detention, almost 47 of which was in such deplorable conditions.

29. There is no reason why, in light of the unchallenged deplorable condition of the holding cell, the police could not have made a better effort to find the virtual complainant. Why no calls could have been made to the number which was left by the virtual complainant with the officer. Why no visit could have been made early on Saturday morning to secure contact with the virtual complainant. Every unnecessary moment spent in such conditions is a moment too much.
30. The court accepts that it would have been difficult for the police to have foretold when they would have found a suspect but a better system ought to have been put into place to contact the virtual complainant especially where it is likely that a suspect ought not to be deprived of his or her liberty unduly, or unnecessarily.
31. In the circumstances, the court finds that 24 hours was a sufficient period of time to have afforded the police to have located the virtual complainant residing within their jurisdiction. In that regard, and having regard to the risks attached to detaining an innocent person in the conditions of the holding cell, a better effort ought to be made to ensure that a proper line of communication be established with the virtual complainant.
32. In the circumstances, the court is of the respectful view that the State is liable for the unlawful detention of the claimant for 28 hours, being the difference between the time spent in detention of 52 hours and the time which the court has found to be reasonable in the circumstances to have located the virtual complainant and secured his attendance of 24 hours.
33. As a result, the court holds that the claimant was unlawfully and falsely imprisoned for the period of 28 hours.

Damages:

34. Having looked at authorities in relation to damages for unlawful detention delivered from 2013 to present the following should be noted:
35. On 20 July 2016 Boodoosingh J awarded two claimants \$50,000 damages each for unlawful detention which lasted for approximately 24 hours after having considered the following factors in the case of **Ricardo Jack v The AG** CV2014-02841 & 02842:
 - 35.1. The claimants say they were in dirty cells (separately) that smelled of faeces and urine.
 - 35.2. Griffith said he was allowed to bathe. Jack said he was not.
 - 35.3. They slept on the floor.
 - 35.4. They both had no convictions before, this episode must have been embarrassing for them and would have injured their feelings and reputation.
 - 35.5. They were arrested for murder, the most serious of offences. It was in respect of a person who was a friend
 - 35.6. They were not afforded the opportunity to have duty counsel since arrangements were not made by the police in breach of the Legal Aid and Advice Amendment Act, No. 3 of 2012, section 15B which was considered an aggravating factor.
 - 35.7. They were not cautioned but this failure to caution was viewed as a lack of understanding on the part of the police rather than malice on their part.
36. On 23 February 2016 Donaldson-Honeywell awarded the claimant in the matter of **Indra Samuel v PC Ali & Anor** CV2014-00608 \$45,000 for unlawful detention for approximately 27 hours. The learned judge found that there was no aggressive treatment of the claimant but held that an award for aggravated damages was justified in light of the inhumane cell conditions she experienced during her detention. The learned judge also considered the following authorities at paragraphs 41 to 44 of that judgment:

“41. In a claim for false imprisonment the Claimant is entitled to recover general damages for the imprisonment and any physical or mental injury which results directly from it as well as Damages for the loss of liberty itself should reflect the length of the unlawful detention: See Halsbury’s Laws of England. To determine the award to be made certain cases with similar lengths of detention should be looked at.

*42. There were no cases on similar awards cited in the closing submissions for the Claimant. The defendant, though denying liability, usefully provided authority for the quantum of damages that would be appropriate in the event that the Court found against them. They cited the case of **Emraan Ali v the Attorney General of Trinidad and Tobago** CV 2012-02695 delivered on March 20, 2014. In that case the Claimant was arrested and detained for approximately two days and three nights. His detention was justified and there was no explanation as to why he was only taken to appear before a Magistrate on Tuesday and not Monday afternoon. The Claimant was awarded Forty-five Thousand Dollars (\$45,000.00).*

*43. In the case of **Wayne Clement v AG** the Claimant was awarded Fifty Thousand Dollars (\$50,000.00) for false imprisonment of seventeen hours in circumstances where the Claimant was arrested for obstructing a police officer in execution of his duty where a search was being conducted on the Claimant’s property and the address on the search warrant was in fact incorrect. The police officer assaulted the Claimant and arrested him in underwear only without affording him the opportunity to dress. The award therefore included aggravated damages.*

*44. In **Rajpath v AG** an award of Thirty-five Thousand Dollars (\$35,000.00) was made in an instance where the police officer mistakenly believed that the Claimant had not paid a fine. A receipt was produced to him the following day and the Claimant was released after fifteen hours of imprisonment. This award was also made inclusive of aggravated damages.*

37. Having read the case of **Emraan Ali v The Attorney General of Trinidad and Tobago** CV 2012-02695 it should be noted that the award of \$45,000 by the learned judge was in relation to unlawful detention or false imprisonment for 24 hours as the judge found that

only his detention for that period was unreasonable. That ruling was delivered 20 March 2014.

38. In the case of ***Thadeus Clement v The AG*** Civ App No 95 of 2010 delivered by Jamadar JA on 13 July 2013 the following comparable cases were considered:
 - 38.1. ***Lewis v The Attorney General*** CV 2007-01952, a decision of Boodoosingh J, delivered on the 2nd July, 2010. Awarded \$75,000.00 for malicious prosecution and \$50,000.00 for unlawful detention (inclusive of an uplift for aggravating factors). The claimant was arrested at 1:30 am, taken to a police station and detained there for 18 hours in deplorable conditions. He was charged with using obscene language. The charge was eventually dismissed. No award for exemplary damages was made. A total of \$125,000.00 was therefore awarded for malicious prosecution and unlawful detention.
 - 38.2. ***Barcoo v The Attorney General*** H.C.A. No. 1382 of 1989, a decision of Mendonca J, delivered on the 19th December, 2007. Awarded \$75,000.00 for malicious prosecution and unlawful detention for a period of 5 days. In fact the claimant was detained at Police Headquarters for about 24 hours during which time he was repeatedly placed in a 'cage'. After having been taken before the magistrate he was remanded into custody in conditions not dissimilar to those to which the Appellant in this matter was subjected. The proceedings against the claimant took one year before they were determined.
39. This court is of the respectful view that exemplary damages ought not to arise in this case as the circumstances do not warrant it. However, the court does agree that it ought to take the circumstances of the conditions of the holding cell into account as an aggravating factor uplifting the damages to which the claimant is entitled. As a result, the court awards the claimant the sum of \$60,000 for his unlawful detention for the period of 28 hours including an uplift for aggravated damages.

40. With respect to interest, the defendant shall pay to the claimant interest on the said sum at the rate of 2.5% per annum from 5 June 2017 (the date of service on the defendant) to date.
41. The defendant shall pay to the claimant the prescribed costs of the claim quantified by the court in the sum of \$16,854.79.

The Order

42. There will be judgment for the claimant against the defendant.
43. The defendant shall pay to the claimant damages in the sum of \$60,000 inclusive of an uplift for aggravated damages together with interest thereon at the rate of 2.5% per annum from 5 June 2017 to date.
44. The defendant shall also pay to the claimant the prescribed costs of the claim quantified by the court in the sum of \$16,854.79.

/s/ D. Rampersad J.