THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-02741

BETWEEN

JOSH SINGH

Claimant

V.

THE NORTH WEST REGIONAL HEALTH AUTHORITY

First Named Defendant

DR. IAN HYPOLITE

Second Named Defendant

LYSTRA SINGH

Third Named Defendant

SUZANNE SINGH

Fourth Named Defendant

JOHN SINGH

Fifth Named Defendant

SHERRY SINGH

Sixth Named Defendant

Appearances:

Claimant: **Gerard Raphael instructed by Lana Chunilal**

1st & 2nd Defendants: **Terrance Bharath instructed by Charles Law**

3rd to 6th Defendants: **Marielle Cooper-Leach**

Before The Honourable Mr. Justice Devindra Rampersad

Dated: 23 September, 2020

JUDGMENT

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Introduction

1. On 7 December 2016, the claimant was accosted at his home at around 6 AM allegedly by two ambulance attendants under the direction of the third, fourth, fifth and sixth defendants and taken to the St. Ann's Psychiatric Hospital. There he was admitted as an "urgent admission" under the provisions of the Mental Health Act Chapter 28:02 of the laws of Trinidad and Tobago (referred to herein as the "MHA"). He was kept there until 14 December 2016 and then released.

2. The claimant brought these proceedings for damages. After the trial and after the initial salvo of written submissions but before their completion by way of replies, in its submissions in reply, the first defendant submitted to judgment.

3. As a result, the remaining issues for determination was the remaining defendants' liability for the claimant's arrest and detention up to the point when he was handed over at the St. Ann's Psychiatric Hospital, their liability if any for the period when he was at the hospital and the quantum of damages to be awarded to him.

The Case on the Pleadings

4. The claimant is the third defendant's son. The fourth, fifth and sixth defendants are his siblings. He has one other sister, Kairi, who is not a party to these procecedings but who gave evidence on his behalf. The second defendant is a well-known psychiatrist who was employed with the first defendant at the material time. The claimant and his relatives, who are parties in these proceedings, all live at the same location at No. 5 Park Avenue, Port of Spain with the claimant solely occupying a two bedroom apartment which he had previously occupied with his wife and children. The claimant and his mentioned family are all the owners of that property along with another property situated at Upper Santa Cruz – both of which were part of the estate of his father.

5. In January 2016, the claimant wrote to his mother, the third defendant, demanding complete accounts of the rents and profits collected from the Santa Cruz property in respect of which he had granted her a power of attorney, as did the other siblings. There is no record of any written response to that request.

6. In November 2016, the claimant's attorney wrote to the third defendant about the claimant's interest in the Park Avenue property and the perceived intention to convey that property to one Mrs. Lochan[1]. A pre-action protocol letter was also sent off in relation to the said accounts. The third defendant's attorney-at-law responded requesting an extension to 17 February 2017 to reply having regard to the volume of records to be produced. As far as the court is aware, those records have not yet been produced to date.

7. In his statement of case, the claimant said that his mother and his siblings conspired amongst themselves together with the second defendant to have the claimant taken to the St. Ann's Psychiatric Hospital and incarcerated there for the sole purpose of preventing him from initiating the threatened legal proceedings against his mother. This was done on 7 December 2016 when he was awakened in his bed by two ambulance attendants, handcuffed and taken against his will to the said hospital.

8. He remained at the hospital until 14 December 2016 in the circumstances set out below in detail.

9. The claimant alleges that the first defendant was in breach of its statutory and/or other duty towards him and was accordingly negligent. He sought aggravated damages against all of the defendants for the high-handed, offensive, hurtful and humiliating treatment he received from the first defendant, its servants and/or agents and in particular by the second defendant.

[1] At the end of the day, it was accepted that there was no such person – obviously a figment of his imagination created in his dreams.

10. The claimant went on to seek damages generally and on the footing of aggravated damages against the first defendant, which he said was vicariously liable for the acts and the omissions of the medical staff, psychiatric social workers, attendants under their control and other staff at the hospital who falsely imprisoned and assaulted him. Against the other defendants, he sought damages for having been unlawfully removed from his bed at his residence and unlawfully detained and/or imprisoned for eight days.

The First and Second Defendants' Defence

11. In the defence filed on his behalf and on behalf of the first defendant, the second defendant alleged that the claimant visited him in his private office on 7 February and 21st of February 2011 – more than five years prior to the incident which is the subject of these proceedings. The second defendant specifically denied being part of any conspiracy and averred that he had only given general advice regarding the procedure to admit the patient to the hospital for treatment. He explained, it is alleged, that the patient could be admitted either voluntarily or involuntarily and that it was possible to admit a patient involuntarily by way of an urgent admission, a medically recommended admission or by a mental health officer referral.

12. All involvement with the ambulance attendants on 7 December 2016 was denied and it was maintained that the claimant was admitted as an urgent admissions patient according to sections 6 (a), 7 and 8 of the MHA. The justification for that admission was pleaded.

The Third to Sixth Defendants' Defence

13. The third to sixth defendants, in their defence, went into details of the changes that they noticed in respect of the claimant regarding his behaviour and habits from early 2011 to the end of 2015. They gave details of their belief that the claimant was being influenced by one Mr. Douglas with whom the claimant had spent some time during the 2015 Christmas period. They indicated that due to that concern, they decided to take the necessary action to get help for

the claimant as a result of which they engaged the services of Avatar Ambulance Services who assisted in removing him from the house to the St. Ann's Psychiatric Hospital. They say that he agreed to leave with the attendants after they, and the fifth defendant, explained why they were there.

14. These defendants also mentioned matters involving the claimant's estranged wife but those allegations were not furthered by her at the trial.

15. They say that at all times they acted out of concern for the claimant's mental and physical health and well-being as well as out of fear for their safety.

The Law

16. This case obviously centres on the lawfulness of the claimant's arrest by the third to sixth defendants and his detention by the first defendant with the involvement of the second defendant. Before proceeding to deal with the facts of the case, it is necessary to establish the law and the parameters involving the detention of a person under the MHA. The court intends to address this issue against the background of the Constitution – a point raised by the claimant's attorney-at-law in submissions. This was not a point that was addressed by the defendants especially since the first defendant submitted to liability as mentioned above thereby rendering argument on the point otiose. The court therefore did not have full discussion on both sides in respect of the constitutional framework and therefore the first and second defendants did not ventilate the application of the Constitution, especially in light of the submission to judgment.

17. The court has gone on to consider the issue, however, notwithstanding the fact that this was not a constitutional law matter nor was it a matter in which the Attorney General was a party. Counsel for the first and second defendants submitted that this discussion ought not to form part of this substantive judgment but, possibly, an addendum to it. The court found it necessary, however, to consider the Constitution in this context and this arises from the

fact that the Constitution shapes the parameters and foundation of our laws. Therefore, in discussing those laws, it is not inappropriate in this court's respectful view to place those laws in the context in which they must be read i.e. in the context of the Constitution.

General Principles with respect to Detention

18. The Constitution of Trinidad and Tobago is the defining document which provides the foundation for the rights and liberties of the citizens of Trinidad and Tobago and which shapes the legislative framework in this jurisdiction. The preamble expressed the desire that the Constitution should enshrine the principles and beliefs set out in that preamble and make provision for ensuring the protection of fundamental human rights and freedoms in Trinidad and Tobago. Those fundamental rights and freedoms protected under the Constitution were enshrined in section 4 thereof and includes the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law[2]. It includes the right of the individual to respect for his private and family life; freedom of movement; freedom of conscience and religious belief and observance; and freedom of thought and expression[3].

19. Section 5 goes on to state that Parliament may not authorize or effect the arbitrary detention, imprisonment or exile of any person[4] or deprive a person who has been arrested or detained of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention[5], of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him[6] and also of the right to be brought promptly before an appropriate judicial authority[7]. Section 5 also states that Parliament may not deprive a person of the right to a fair hearing in accordance with the

[2] Section 4 (a)
[3] Sections 4 (c), (g), (h) and (i)
[4] Section 5 (2)(a)
[5] Section 5 (2) (c)
[6] Section 5 (2) (c) (ii)
[7] Section 5 (2) (c) (iii)

principles of fundamental justice for the determination of his rights and obligations[8] or of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to his/her rights and freedoms[9].

20. Clearly, therefore, the underlying principle of the rights and freedoms of an individual as defined under the Constitution must be properly preserved. In this case, it is especially applicable since the MHA commenced on 2 December 1975 and cannot therefore be described as existing law[10] which may be immune to the provisions of the Constitution. As pointed out by attorney-at-law for the first and second defendants, the same was passed into law by a 3/5 majority thereby introducing it into law despite any challenge to its constitutionality. To my mind, however this recognizes the supremacy of the Constitution and the balancing act that it requires against the needs of society. The court bears in mind, however, that this is not a case involving the determination of the constitutionality of the MHA but the court still feels it necessary to understand the constitutional framework within which the Act must necessarily operate, notwithstanding the special majority.

21. Lady Hale, in the UK Supreme Court case of ***Welsh Ministers v PJ*** [11] stated[12], in a case in the UK which is not founded on a written constitution as in this jurisdiction:

> *"We have to start from the simple proposition that to deprive a person of his liberty is to interfere with a fundamental right – the right to liberty of the person. It is a fundamental principle of statutory construction that a power contained in general words is not to be construed so as to interfere with fundamental rights. The best-known explanation for this principle is contained in Lord Hoffmann's opinion in* ***R v Secretary of State for the Home Dept, ex p Simms*** *[1999] 3 All ER 400 at 412, [2000] 2 AC 115 at 131:*

[8] Section 5 (2) (e)
[9] Section 5 (2)(h)
[10] These provisions were not substantially different from the provisions in the 1962 Constitution.
[11] [2019] 2 All ER 766
[12] At paragraph 24

> *'Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document.'*
>
> *This famous passage was quoted by Lord Reed in* ***AXA General Insurance Ltd v Lord Advocate*** *[2011] UKSC 46, (2011) 122 BMLR 149, [2012] 1 AC 868, para [151]. Lord Reed went on to explain, at para [152]:*
>
> > *'The principle of legality means not only that Parliament cannot itself override fundamental rights or the rule of law by general or ambiguous words, but also that it cannot confer on another body, by general or ambiguous words, the power to do so. As Lord Browne-Wilkinson stated* ***in [Pierson v Secretary of State for the Home Dept*** *[1997] 3 All ER 577 at 592, [1998] AC 539 at 575]:*
> >
> > > *"A power conferred by Parliament in general terms is not to be taken to authorise the doing of acts by the donee of the power which adversely affect … the basic principles on which the law of the United Kingdom is based unless the statute conferring the power makes it clear that such was the intention of Parliament." '*

22. Clearly, therefore, clear and unambiguous words are required by a statute in order to deprive a person of their constitutional rights and freedoms and to continue to so deprive the person.

23. Brooke LJ in ***D v Home Office***[13] cited the words of Lord Atkin and Lord Griffiths in paragraph 69:-

[13] [2006] 1 WLR

*"No member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a court of justice. And it is the tradition of British justice that judges should not shrink from deciding such issues in the face of the executive" (**Eshugbayi Eleko v Office Administering the Government of Nigeria** [1931] AC 662, 670, per Lord Atkin.)*

"in English law every imprisonment is prima facie unlawful and ... it is for a person directing imprisonment to justify his act. The only exception is in respect of imprisonment ordered by a judge, who from the nature of his office cannot be sued, and the validity of whose judicial decisions cannot in such proceedings as the present be questioned. (Liversidge v Anderson [1942] AC 206, 245-246, per Lord Atkin.)

24. Lord Griffiths in ***Murray v Ministry of Defence***[14] opined that the law attaches supreme importance to the liberty of the individual and if he suffers a wrongful interference with that liberty it should remain actionable even without proof of special damage.

25. According to Lord Bingham of Cornhill:

"Freedom from executive detention is arguably the most fundamental and probably the oldest, the most hard won and the most universally recognised of human rights …"[15]

26. The claimant's attorney-at-law relied on the case of ***In re S.-C. (MENTAL PATIENT: HABEAS CORPUS)***[16] for the apposite statements by Bingham MR in relation to a mental health patient:

"The appeal appears to raise certain fundamental principles. As we are all well aware, no adult citizen of the United Kingdom is liable to be confined in any institution against his will, save by the authority of law. That is a fundamental constitutional principle, traceable back to chapter 29 of Magna Carta 1297 (25 Edw. 1, c. 1), and before that to chapter 39 of Magna Carta 1215 (9 Hen. 3). There are, of course, situations in which the law sanctions detention. The most obvious is in the case of those suspected or convicted of crime. Powers then exist to

[14] [1988] 1 WLR 692, 703
[15] Lord Bingham 'Personal Freedom and the Dilemma of Democracies' (2003) 52 ICLQ 841–858
[16] [1996] 2 WLR 146, 148-149

arrest and detain. But the conditions in which those powers may be exercised are very closely prescribed by statute and the common law. Another instance that springs to mind is that of unlawful immigrants. Again, they may be apprehended and detained but again the powers to detain are very closely prescribed by legislation and subordinate legislation in the field of immigration.

More relevant to this appeal is the instance of mental patients. They present a special problem since they may be liable, as a result of mental illness, to cause injury either to themselves or to others. But the very illness which is the source of the danger may deprive the sufferer of the insight necessary to ensure access to proper medical care, whether the proper medical care consists of assessment or treatment, and if treatment, whether in-patient or out-patient treatment.

Powers therefore exist to ensure that those who suffer from mental illness may, in appropriate circumstances, be involuntarily admitted to mental hospitals and detained. But, and it is a very important but, the circumstances in which the mentally ill may be detained are very carefully prescribed by statute. Action may only be taken if there is clear evidence that the medical condition of a patient justifies such action, and there are detailed rules prescribing the classes of person who may apply to a hospital to admit and detain a mentally disordered person. The legislation recognises that action may be necessary at short notice and also recognises that it will be impracticable for a hospital to investigate the background facts to ensure that all the requirements of the Act are satisfied if they appear to be so. Thus we find in the statute a panoply of powers combined with detailed safeguards for the protection of the patient. The underlying issue in the present appeal is whether those powers were properly exercised and whether the applicant was lawfully detained. One reminds oneself that the liberty of the subject is at stake in a case of this kind, and that liberty may be violated only to the extent permitted by law and not otherwise."

27. The learned judge clearly recognized the need for the balance between the fundamental rights and freedoms of the individual as against, as in this case, the urgent need to protect a mental health patient against injury to himself/herself or to others. Obviously, for that detention to be lawful, it must be in *strict* compliance with the statutory provisions and there must be clear evidence that the medical condition of the patient justifies such action. This point is especially salient having regard to the recognition by Parliament that

the Act may possibly infringe on constitutional rights as a result of which a special majority was required. Having regard to that, it must be taken that Parliament intended strict compliance with the Act and the provisions.

28. Where fundamental rights are involved, the court must rigorously scrutinize the evidence and the resulting decision made for the detention[17]. In that regard, the learning in ***Macdonald's Immigration Law and Practice***[18] is quite helpful. Although set in the context of immigration law, the principles are somewhat analogous in respect of the detention of parties without judicial intervention. The author states, convincingly, that:

> *"The court's duty is jealously to guard the liberty of the person and to require clear words in a statute to take away liberty and to interfere with fundamental rights.*[19] ***Broad statutory discretions to detain should be construed narrowly and strictly ensuring that they are only exercised for the proper statutory purpose****.*[20]*.*

[Emphasis added]

29. The author went on to opine:

> *"The lawfulness of a detention therefore depends on a number of considerations:*
>
> *(i) whether it is or continues to be for the statutory purpose for which the power is given;*
>
> *(ii) whether the detention has gone on or will go on for longer than is reasonably necessary for the purpose for which it is authorised; and*

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[17] See ***Regina (Rogers) v Swindon NHS Primary Care Trust*** [2006] 1 WLR 2649 para 56

[18] Chapter 18 Detention and Bail/Limits to the power to detain/General principles at paragraphs 18.43 and 18.44

[19] ***Tan Te Lam v Superintendent of Tai A Chau Detention Centre*** [1997] AC 97; ***R v Secretary of State for the Home Department, ex p Simms*** [1999] 3 WLR 328, 341F.

[20] In ***Mahmod (Wasfi Suleman), Re*** [1995] Imm AR 311 Laws J stated the position as follows *'While of course Parliament is entitled to confer power of administrative detention without trial, the courts will see to it that … the statute that confers it will be strictly and narrowly construed and its operation and effect will be supervised by the court according to high standards'*. See also ***R (on the application of Lumba) v Secretary of State*** for the ***Home Department*** [2011] UKSC 12 per Lord Dyson at para 53. The mischief of administrative detention was neatly summarised by Lady Hale in Kambadzi v Secretary of State for the Home Department [2011] UKSC 23 at paragraph 63 as this: *'No court had ordered or authorised or approved this detention. The trial judge… had not even recommended it. A Government official decided to lock him up, on the face of it until a Government official decided to take the next step'*.

(iii) whether the exercise or continued exercise of the power is in accordance with administrative law principles of rationality, fairness and reasonableness, and in particular, whether the exercise of discretion is consistent with stated policy; and

(iv) as an overriding consideration embracing some of the above factors, whether the detention is for a lawful purpose, is prescribed by law and is proportionate to its legitimate aim under Article 5(1)(f) of the ECHR."

30. In this case, it is very easy to replace the words "Article 5(1)(f) of the ECHR" with the relevant provisions of the MHA.

31. The learning reminds the court of the learning in ***Ramsingh v Attorney General of Trinidad & Tobago***[21] in which Lord Clarke, reading the judgment of the Board in relation to the detention of a person at a police station under section 3(4) of the Criminal Law Act 1936, Ch 10.04, stated:

[8] The relevant principles are not significantly in dispute and may be summarised as follows:

"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."

32. Although the circumstances in that case were different, the principles are easily translatable to the case at hand with the necessary modifications.

[21] [2012] UKPC 16

Essentially, the burden of proof lies with the detainor to justify the initial detention and the continued detention. That principle will be most relevant as the court goes through the provisions of the MHA in the context of the facts of this case.

33. The court will now go on to look at the provisions of the MHA in detail so that the parameters of the power of detention may be discussed and analyzed and determined. This is particularly necessary in light of the fact that the second defendant's liability remains outstanding, since the submission to judgment was only in respect of the first defendant, and remains an issue for the court to determine.

The Mental Health Act

34. This Act commenced on 2 December 1975 and was described therein as *"an Act to provide for the admission, care and treatment of persons who are mentally ill and for matters connected there with an incidental thereto".*

Section 6

35. The power to admit and detain mentally ill persons is described in Part I of the MHA. Under section 6 of the MHA:

> *"6. Every person who is or is reasonably believed to be in need of such treatment as is provided in a psychiatric hospital may be admitted thereto –*
>
> *(a) as an urgent admission patient;*
>
> *(b) …*

36. It is helpful, at this stage, to break down the requirements of this section. Firstly, admission under this section is reserved to be handled in a psychiatric hospital which is a place appointed as such by Order under section 4 of the

MHA[22]. Therefore, the burden is on the first defendant to establish that the claimant was admitted to a psychiatric hospital so appointed by Order of the Minister. The section goes on to empower admission where the person is reasonably believed to be in need of such treatment as is provided by that hospital. The objective standard of reasonable belief is therefore introduced, and that must be according to reasonable belief by medical standards for the reasons which will be given below. The purpose of the admission is clearly to administer treatment. There is no other statutorily defined purpose of that admission i.e. to observe.

37. It may be that the necessary implication arises in relation to the same. In that regard, in ***Coombs v North Dorset NHS Primary Care Trust and another*** [23] , it was stated:

> *[18] It is common ground that the responsible clinician has ultimate control over the treatment of a detained patient, and that no request by the patient or his family can override the responsible clinician's treatment decisions.*
>
> *[25] In **R v Broadmoor Special Hospital, ex p S, H and D** [1998] COD 199 Auld LJ spoke in terms of the control maintained over detained patients:*
>
> > *'Detention for treatment necessarily implies control for that purpose. If any authority were needed for that proposition in this context, it is to be found in the reasoning of Lord Widgery CJ and of Lord Edmund-Davies in [**R v Bracknell Justices, ex p Griffiths** [1975] 1 All ER 900 at 902, sub nom Pountney v Griffiths [1976] AC 314 at 318, DC, and **Pountney v Griffiths** [1976] AC 314 at 335, [1975] 2 All ER 881 at 888, HL, respectively], when construing the statutory predecessor of the 1983 Act, the Mental Health Act 1959. Both statutes leave unspoken many of the necessary incidents of control flowing from a power of detention for treatment, including: the power to restrain patients, to keep them in seclusion (cf [**Hague v Deputy Governor of Parkhurst Prison; Weldon v Home Office** [1991] 3*

[22] *"4. The Minister may, by Order, appoint the whole or any part of any building, house, or other place, with any out-houses, yards, gardens, grounds or premises belonging thereto, to be a psychiatric hospital for the care and treatment of mentally ill persons."*
[23] [2013] 4 All ER 429, 436 et al

> *All ER 733, sub nom R v Deputy Governor of Parkhurst Prison, ex p Hague [1992] 1 AC 58, HL]), to deprive them of their personal possessions for their own safety and to regulate the frequency and manner of visits to them (though not the power of compulsory treatment, for which the 1983 Act now expressly provides in Pt IV). Lords Widgery and Edmund-Davies were of the clear view that the power of detention and treatment necessarily carried with it a power of control and discipline.'*

38. Lady Hale, in ***Welsh v PJ*** (supra), in dealing with the Court of Appeal dilemma with respect to whether the power to impose conditions which has the effect of depriving a community patient of his liberty for which there was no express power under the UK Mental Health Act was a power by necessary implication, relied upon the following in that regard:

> *[25] In any event, as the Court of Appeal recognised, the test for a necessary implication* ***is a strict one****. As Lord Hobhouse put it in* ***R (on the application of Morgan Grenfell & Co Ltd) v Special Comr of Income Tax*** *[2002] UKHL 21, [2002] 3 All ER 1, [2003] 1 AC 563, para [45]:*
>
> > *'necessary implication is not the same as a reasonable implication as was pointed out by Lord Hutton in [B (a minor) v DPP [2000] 1 All ER 833 at 855, [2000] 2 AC 428 at 481].* ***A necessary implication is one which necessarily follows from the express provisions of the statute construed in their context. It distinguishes between what it would have been sensible or reasonable for Parliament to have included or what Parliament would, if it had thought about it, probably have included and what it is clear that the express language of the statute shows that the statute must have included****.'*
>
> *[Emphasis added]*

39. The question therefore lies as to whether this power to observe before recommending treatment is a necessary implication.

40. The court has found the European Court of Human Rights decision in ***Winterwerp v The Netherlands***[24] to be of great assistance in resolving this question. In that case, Mr. Winterwerp was detained in accordance with an

[24] [1979] ECHR 4

emergency procedure and was retained in the psychiatric hospital for an extended period of time. He was initially held after he had stolen documents from the local registry office, been detained by the police and was then found lying naked on a bed in a police cell. His complaint was that he was never heard by the various courts all notified of the orders made, that he did not receive any legal assistance and that he had no opportunity of challenging the medical reports. And important point was made in that decision[25] that the lawful detention of persons of unsound mind under the relevant statute:

> *"… could not be taken as permitting the detention of a person simply because his views or behaviour deviate from the norms prevailing in a particular society."*

41. The decision went on to speak about the necessity to justify compulsory hospitalization especially where there was the absence of medical evidence establishing the patient's mental state. It was stated by the Court:

> *"39……In the Court's opinion, except in emergency cases, the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of "unsound mind". The very nature of what has to be established before the competent national authority - that is, a true mental disorder - calls for objective medical expertise. Further, the mental disorder must be of a kind or degree warranting compulsory confinement. What is more, the validity of continued confinement depends upon the persistence of such a disorder…"*

42. To my mind, this assists the court in dealing with the question posed in relation to the issue of detention for observation. This court accepts the principal in law, therefore, that except in emergency cases, a person cannot be deprived of his liberty unless he is or is *reasonably believed to be in need* of such treatment as is provided in a psychiatric hospital.

[25] At paragraph 38

Section 7

43. Section 7 goes on to detail the provisions in relation to the admission of urgent admission patients:

> *7. (1) The Psychiatric Hospital Director or a duly authorised medical officer may, subject to subsection (3), admit to a hospital as an urgent admission patient any person in respect of whom an application is made.*
>
> *(2) An application under subsection (l)—*
>
> *(a) may be made by any person who alleges that the person in respect of whom the application is made is mentally ill and, in the interest of his health and for the safety and protection of others, or either of them, ought to be detained in a hospital; and*
>
> *(b) shall be accompanied by a certificate of a medical practitioner other than the duly authorised medical officer responsible for the admission of the person.*
>
> *(3) A person shall not be admitted to a hospital as an urgent admission patient if more than three days have elapsed since the date of issue of the medical certificate referred to in subsection (2)(b)."*

44. As the MHA provides, the only persons who may admit an urgent admission patient are the Psychiatric Hospital Director or a duly authorized medical officer. The latter is defined under the MHA as follows:

> *""duly authorised medical officer" means the medical officer in charge of a general hospital in which there is a psychiatric ward or any other medical officer authorised by the Minister to carry out duties such as are required to be performed by a Psychiatric Hospital Director under the authority of this Act"*

45. The burden therefore lies on the first defendant to establish that the person who admitted the claimant was either the Psychiatric Hospital Director, or the medical officer in charge of a general hospital in which there is a psychiatric ward, or any other medical officer authorized by the Minister to carry out the duties defined. In the last case, that authority from the Minister must be

produced. With respect to the other two categories, sufficient cogent evidence must also be produced.

46. The admission can only come about upon application being made in the form prescribed by the Regulations[26]. The application, obviously, must relate to a person falling under section 6 discussed above.

47. The application must allege that the person is mentally ill and in the interest of his health and for the safety and protection of others, or either of them, ought to be detained. To my mind, having regard to the words used in section 6 (a), it is necessary to read into the statutory provision that the urgent admission of a patient is required due to the need for the *urgent* safety and protection of the alleged patient, or others, or both of them along with the *urgent* health interest of the person. This seems to be a critical part of the manner in which the section has to be construed since there are other avenues for the admission of a person who is or is reasonably believed to be in need of care and treatment for mental illness under the rest of section 6. Parliament's deliberate use of the words "urgent admission" therefore introduces that element of urgency in the process and consideration. Therefore, this court respectfully interprets that the purpose of the urgent admission is the need for the *urgent* safety and protection of the parties involved and the *urgent* health safety and protection interests of the person. It is important to note that the conditions are all conjunctive and therefore all must exist for the application to be successful.

48. Crucially, the application in the requisite form has to be accompanied by a certificate of a medical practitioner other than the admitting duly authorized medical officer. Medical practitioner has been defined in the MHA as a registered member of the Medical Board of Trinidad and Tobago. As a result, there is no statutory requirement that the medical practitioner be specialized in matters of mental illness.

[26] See definition of application at section 3 of the MHA.

49. The urgency of the provision is highlighted by the fact that persons shall not be admitted if more than three days have elapsed since the date of issue of the medical certificate, as mentioned in the preceding paragraph.

Section 8

50. The MHA goes on to put into place a period of revision of the admission of the person as a means of determining whether continued detention is required for the purpose set out in sections 6 and 7. It provides as follows:

> *"8. (1) The Psychiatric Hospital Director or a duly authorised medical officer shall, within forty-eight hours of admitting to a hospital an urgent admission patient,* ***make or cause to be made*** *on the patient such examination as he may consider necessary for determining whether or not the patient is mentally ill and in need of care and treatment in a hospital.*
>
> *(2) If on examination the Psychiatric Hospital Director or the duly authorised medical officer is satisfied that the patient is in need of care and treatment in a hospital, he shall keep the patient in the hospital until he is satisfied that—*
>
> *(a) it is in the interest of the patient to discharge him; and*
>
> *(b) the patient is not in need of any further care and treatment in a hospital."*
>
> [Emphasis added]

51. This section places a mandatory obligation on the Psychiatric Hospital Director or duly authorized medical officer mentioned before to make, or cause to be made, such examination within 48 hours and no more. Reasonable delay caused for some legitimate reason aside, the court is of the view that the timeframe must be strictly adhered to in light of the seriousness involved in the detention of a person. The assessment must be made by the suitably designated director/officer or so caused to be done by her/him and the burden of establishing that it was so done is on the first defendant. The examination must then be followed up by a consideration of what he/she thinks is necessary for determining the person's mental health and in need of care and treatment in a hospital. Again, this is conjunctive so the decision-maker has the duty to

consider whether the patient *requires* care and treatment in the hospital *together with* the determination of mental illness. Obviously, therefore, both conditions must be satisfied on that examination.

52. In the event that both conditions are met, the period of detention is until the duly authorized decision-maker is satisfied of the two conditions in section 8 (2). Of course, once the two conditions are satisfied, the natural conclusion is that there would be care and treatment afforded to the person until such time as no further care and treatment is required *in* the hospital. There is no prescribed time frame for reassessment but, having regard to the authorities, it must be that this reassessment ought to be done within a reasonable time having regard to the constitutional rights and freedoms that are being infringed as a result of any detention. As a result, as in the ***Ramsingh*** case, there ought to be constant reasonable reassessments to justify further detention.

The Facts

53. Having considered the statutory framework, the court now has to apply the law to the facts in the case. In this case, two witnesses gave evidence for the claimant – the claimant himself and his sister, Kairi Singh. His estranged wife, Sascha, who gave a witness statement, did not attend to give evidence.

54. The second defendant gave evidence on his own behalf and Doctors Tanya Johnson and Chinwe Ezeokoli gave evidence on behalf of the first defendant. Each of the other defendants gave evidence on their own behalves.

55. There seems to be no dispute that the St. Ann's Psychiatric Hospital is a psychiatric hospital as designated under section 4 of the MHA.

The Initial Apprehension of the Claimant

56. The claimant said that on 7 December 2016, he had had no previous or other history of mental illness and was never a patient of St. Ann's Psychiatric

Hospital or any other institution for mental illness, nor was he ever treated by any medical practitioner for such illness[27]. He claimed in his witness statement that he never exhibited any violent conduct to his siblings, wife or any other person or signs that he was a physical threat to his own physical safety.

57. He is the last of five children of the third named defendant, having been born on 24 August 1981, and the fourth, fifth and sixth named defendants as well as the said Kairi Singh are his siblings. At the material time, the third, fourth, fifth and sixth named defendants together with Kairi resided in the two-storey dwelling house situated at No. 5 Park Ave., Port of Spain and he resided in the adjoining two bedroom apartment at the same address. He is a part owner of the said property.

58. On the night of 6 December 2016, after he went to bed and locked the doors of the said apartment, he was awakened in the course of the night by the voice of a stranger shouting: *"leh we go, leh we go. We going to the hospital for you to get a check-up."* His hands were in handcuffs and he saw two strange men together with the fourth, fifth and sixth defendants. He said that the fifth defendant told him: "Don't fight because it would be worse for you."

59. He said he was confused and disoriented. One of the ambulance attendants[28] told him he could go the easy way or the hard way. He was taken to the St. Ann's Psychiatric Hospital, presumably in an ambulance as he did not specify that in the witness statement, and at the admissions department, he was made to sit on a chair and his handcuffs were removed by one of the ambulance attendants.

60. The fifth defendant, the claimant's brother, gave particular evidence of what transpired in 2016 leading up to the claimant's detention. It was common

[27] Dr. Hypolite, the second defendant, gave uncontroverted evidence that he had treated the claimant privately on 7 February 2011 and on 21 February 2011 at his private psychiatry office. He was diagnosed with a certain condition and was prescribed an anti-anxiety drug with sedative properties to assist with sleeping. At the consultation held on 21 February, it was concluded that the claimant was functioning much better and his job was the source of his issue and that he was then hunting for a new job.
[28] The court infers that the two strange men were the ambulance attendants

ground that over the Christmas holidays in 2015, the claimant went on a retreat with Mr. Arthur Douglas. When he returned, the fifth defendant said that he appeared more unkempt, wore dirty clothing, his hair, moustache and beard were untrimmed and unruly and he muttered to himself often. Shortly after his return, the claimant gave the third defendant (their mother) a letter demanding an account of all rental monies collected on the Santa Cruz property as well as payment to him of his share of the net rental income. The fifth defendant said that his mother became fearful of Josh and for her safety and always locked the doors to the main house as a result. Obviously, this is hearsay as he did not experience that first-hand and the court does not give that statement of what his mother did or how she was feeling much weight since she herself has given evidence in the matter. He said he would call to check on her every few hours throughout the day or she would call to let him know that everything was fine.

61. During 2016, he said that the claimant's appearance worsened and his behaviour became more disturbing. That behaviour was identified as follows:

    61.1. He saw him leaving home with a backpack at dawn on numerous occasions;

    61.2. He saw him walking one Sunday morning on the North Coast Road around 9 AM. He refused his offer of a ride;

    61.3. He gestured and spoke to the third defendant, his mother, in a hostile and aggravated manner and became paranoid. He said in October 2016, the claimant barged into the main house and stood in front of the third defendant shouting and pointing to her face and accused her of trying to steal the properties using fraudulent means together with her cousin Ms. Lochan[29]. When he noticed the fifth defendant present, he became less agitated but still shouting the same accusations. The

[29] It was obvious that there was in fact NO Ms. Lochan in existence

fifth defendant said that the claimant appeared angry and disturbed and he chased him away;

61.4. This was followed by letters from Mr. Douglas acting on the claimant's behalf to the Registrar General with the false claim about Ms. Lochan and to the third defendant demanding his share of the rental monies and to the tenants at the dwelling house "threatening them to leave" (sic).

61.5. The following is his account of what transpired next:

> *"31. The atmosphere at the Family Home became increasingly uncomfortable and something had to be done. Mom, Suzanne, Sherry and I decided we needed to get Josh to the Hospital to be assessed.*
>
> *32. On December 6, 2016, Sherry arranged for Avatar Ambulance Services come to the Family Home and around 6:00 a.m. the following morning, an ambulance arrived with two male attendants, who met Sherry and me at the entrance of the Annex, before we all entered.*
>
> *33. One of the attendants knocked on the bedroom door, opened it and switched on the light, awakening Josh, who was asleep on his bed. The attendant introduced himself to Josh and instructed him to get dressed as he had to accompany him to the hospital for assessment. Josh sat up and said he would not cooperate and that he needed to contact his lawyer, Arthur Douglas. Both attendants held both his hands and he resisted. The first attendant then let go of him and showed him handcuffs, explaining that they had a job to do and preferred to keep things civilized.*
>
> *34. I spoke to Josh at that moment and explained to him that it was in his best interest to co-operate with the attendants and not resist as he was going for an assessment. He then agreed and asked to put on his long pants first, before the attendants placed handcuffs on him and let him out to the ambulance."*

62. The sixth defendant, who was also present when the claimant was accosted, gave a similar account of what led up to the incident but went on to also say that the claimant had threatened the third defendant to "deal with her". She was the one that made the arrangement with the Avatar Ambulance Services.

Her account was slightly different to that of the fifth defendant by introducing the element of the claimant being angry when he was awakened and spoken to by the attendants.

63. The third and fourth defendants gave similar accounts of the matters leading up to the events of 6 and 7 December 2016.

64. The question of the court has to ask itself, at this point, is by what authority did these defendants conspire with each other and arrange to have the claimant forcibly removed from his home on the morning of 7 December 2016? No lawful authority has been suggested and these defendants have not relied upon any statute or principle of common law to suggest that they had the right or authority to do what they did. There was no crime committed or which was in the process of being committed so there was no immediate danger for which some sort of citizen's arrest could have been justified. Neither they, nor the ambulance attendants have been shown to have had any power of arrest or detention.

65. There is no doubt that the claimant was arrested and detained without his consent. The evidence points to their decision that the claimant needed help for his mental illness and, without discussing it with him, chose to take it upon themselves to force that help upon him.

66. The very fact that he was accosted in his bed, grabbed and handcuffed and detained in handcuffs until he arrived at the St. Ann's Psychiatric Hospital is testament to the fact that he had no choice in the matter. The suggestion that he agreed to leave when he was spoken to by the fifth defendant, when taken in the context of what had transpired and what was before him in terms of two male attendants with handcuffs in his room and his brother calling upon him to go along to avoid worsening the situation, is not one that evinces any true consent.

67. There is absolutely no doubt in this court's mind that these defendants had no authority whatsoever to have arrested and detained or to have arranged for

the arrest and detention of the claimant. The ambulance attendants were obviously acting under their instructions as their servants and/or agents and these defendants are therefore liable for their actions. They were the cause of the arrest, detention and transport to the St. Ann's Psychiatric Hospital and were complicit in everything that occurred involving that arrest, detention and transport.

68. Accepting the case for the third to sixth defendants at its highest - that they were concerned for the safety of the third defendant and for the mental health of the claimant – the answer could not be that they could forcibly arrest and remove him. An allegation of mental health issues does not mean a suspension of the claimant's constitutional and other fundamental rights. That suspension may be placed in the balance if there was an immediate need for some sort of urgent response. There was none in evidence. The change had been noticed over a period of time stretching back to December 2015 in particular. They were now at the end of 2016 and the only apparent driving factor which may have changed the mix was the introduction of a pre-action protocol letter against the third defendant. Maybe they thought that they had to act quickly to address that new concern? Who knows. Nevertheless, in this court's mind, they were wrong to have acted as they did.

69. Consequently, the court holds that the third, fourth, fifth and sixth named defendants unlawfully arrested and detained the claimant on the morning of 7 December 2016 in his bedroom at No. 5 Park Avenue, Port of Spain and unlawfully imprisoned him and transported him to the St. Ann's Psychiatric Hospital. For that, they are liable to the claimant.

The Claimant's Admission at St. Ann's Psychiatric Hospital

70. Dr. Tanya Johnson gave evidence for the second defendant. At the time, she was a House Officer at the Hospital[30] . She described her duties as including the performance of detailed history taking, examinations and initial

[30] See paragraph 2 of her witness statement

assessment of patients. She said that she was responsible for the daily psychiatric and medical management of in-patients. She also provided out-patient care at the Psychiatric Outpatient Clinics throughout the country. However, she is not a specialist in psychiatry.

71. Crucially, she has not described herself as the Psychiatric Hospital Director at the Hospital. Further, even though she describes herself as a duly authorised medical officer, there was no evidence proffered by her in relation to the definition of the same under the MHA[31]. To break it down under each element, she did not show that she was the medical officer in charge of a general hospital in which there is a psychiatric ward. Neither did she show that she was a medical officer authorized by the Minister to carrier duties such as are required to be performed by a Psychiatric Hospital Director under the authority of the MHA. When she was asked in cross examination about the basis on which she said that she was "the duly authorized medical officer", her response was:

> *"A. Well I work at St. Ann's Hospital and I am trained to interview and make a decision..*
>
> *Q And that's the basis?*
>
> *A. Yes"*

72. There is no doubt that she was the medical officer who admitted the claimant and, according to her, she made an informed decision to do so from her experience and training as a medical doctor in the field of psychiatry and as a duly authorized medical officer because the claimant posed a risk to his safety and the safety of his family. In relation to the latter, she defined it in her witness statement as he having predicted the deaths of his family which she took to mean that a risk existed.

[31] ""duly authorised medical officer" means the medical officer in charge of a general hospital in which there is a psychiatric ward or any other medical officer authorised by the Minister to carry out duties such as are required to be performed by a Psychiatric Hospital Director under the authority of this Act"

73. Dr. Johnson came to this decision following what she deemed to be a standard practice that the admitting medical practitioner and the duly authorized medical officer consult each other regarding the status of an urgent patient. She also stated that was *"standard practice to seek information from other sources as it assists the admitting medical practitioner as well as the medical officer in drawing valid clinical conclusions when deciding whether an individual should be admitted as an urgent patient "*.

74. Obviously, neither of these circumstances are specifically set out in the statute. Further, Dr. Johnson has not produced any policy document or regulation in respect of this alleged standard practice. Definitely, the second defendant who has significantly more experience both at this Hospital and in the field of psychiatry and is a specialist in the field, along with being a lecturer in psychiatry at the University of the West Indies, made no mention whatsoever of this alleged policy.

75. To my mind, it is a policy which causes some concern since it opens the door for collaboration and possible collusion between medical practitioners. It seems to this court that the admitting practitioner under the MHA needs to be insulated from the certificate issuing medical practitioner in order to dispassionately and objectively assess the very serious step of an urgent admission and the deprivation of a person's constitutional rights and freedoms in respect of his/her liberty. Discussion between the two and their collaboration takes away the objective re-examination of the factors necessary for the activation of an urgent admission by the admitting medical practitioner. Although there is no statutory explanation as to the process to be employed, the narrow construction of section 7 of the MHA prescribes the consideration of the application in the prescribed form with an attached certificate. There is no provision for a meeting of the minds or a consultation between the two medical practitioners. Armed with a certificate, under the law, the admitting medical practitioner has to then consider the facts to establish the conditions and purpose of section 7. Insulating the admitting medical practitioner from

the certifying medical petitioner, to the court's mind, allows the admitting medical practitioner to consider the facts afresh with an untainted mind.

76. As Dr. Hypolite himself said in his witness statement:

> *"10. … I did not interact with or "refused to speak" with the Claimant on that day. Dr. Tanya Johnson and Dr. Sarpavarupu was still in the process of gathering the Claimant's patient information in preparation for my interview with the Claimant. This represented a multi—tier system of assessment which is a common medical practice that gives the advantage of exposing patients to more than one examination by medical practitioners, resulting in more than one expert opinion."*

77. In this court's respectful view, the admitting medical practitioner, and she alone, is operating in a quasi-judicial function under the statute to determine if the factors prescribed in the MHA have been properly adduced factually to justify the deprivation of the person's liberty. That, to my mind, has to be an untainted process with sufficient facts properly set out. It is for exactly that reason that the admitting medical practitioner is a person designated to be of significant credentials in the defined office of Psychiatric Hospital Director or as approved and so appointed by the Minister.

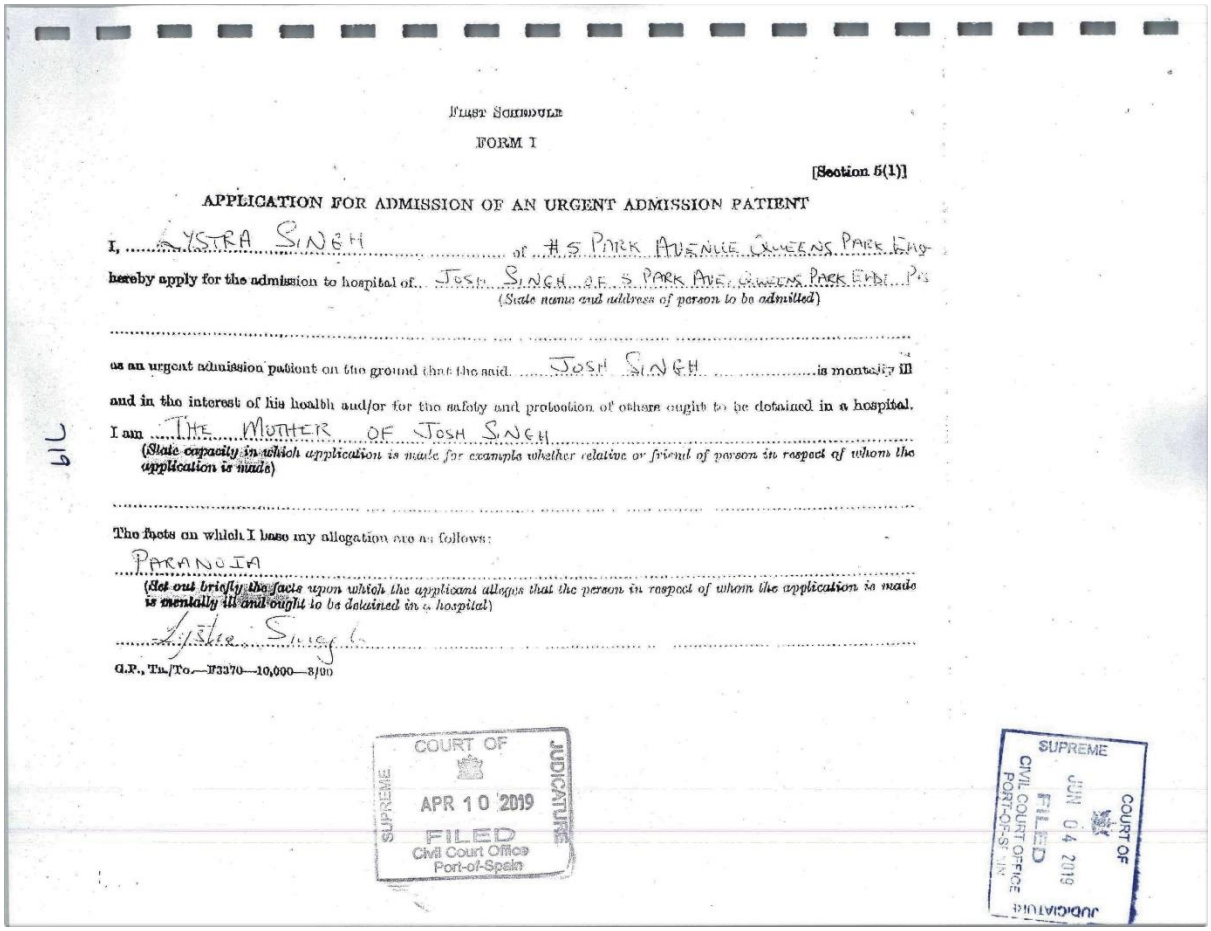
78. On that basis alone, i.e. the first defendant's failure to prove on a balance of probabilities that it abided by and complied with the provisions of the MHA in relation to section 7 thereof, it is clear that the admission of the claimant and his detention was unlawful. That has been accepted by the first defendant. From the evidence, however, the court finds on a balance of probabilities that the second defendant was not involved in the admission process and therefore cannot be held liable for that.

79. Notwithstanding that finding, in the event that the court is wrong on this point, this court will still go on to determine the validity of the application for admission because it is that document which is crucial and instrumental in making the decision to detain and admit the person.

The Application

80. The application is set out on what is described as "Form 1" under section 5 (1) of the Mental Health Act, Act No. 30 of 1975. This information i.e. in relation to the statutory basis of the form, did not form a part of the case put forward at the trial but was provided by attorney-at-law for the first defendant in response to a query raised by the court in relation to the same.

81. Because of the importance of this document to the whole process, it is necessary to set out the contents in detail:



FIRST SCHEDULE

FORM 1

[Section 5(1)]

APPLICATION FOR ADMISSION OF AN URGENT ADMISSION PATIENT

I, YSTRA SINGH of #5 PARK AVENUE QUEENS PARK EAST

hereby apply for the admission to hospital of JOSH SINGH OF 5 PARK AVE, QUEENS PARK EAST POS

(State name and address of person to be admitted)

as an urgent admission patient on the ground that the said JOSH SINGH is mentally ill and in the interest of his health and/or for the safety and protection of others ought to be detained in a hospital.

I am THE MOTHER OF JOSH SINGH

(State capacity in which application is made for example whether relative or friend of person in respect of whom the application is made)

The facts on which I base my allegation are as follows:

PARANOIA

(Set out briefly the facts upon which the applicant alleges that the person in respect of whom the application is made is mentally ill and ought to be detained in a hospital)

Ystra Singh

G.P., Tr./To.—F3370—10,000—8/00

COURT OF JUDICATURE SUPREME APR 10 2019 FILED Civil Court Office Port-of-Spain

COURT OF JUDICATURE SUPREME JUN 04 2019 FILED CIVIL COURT OFFICE PORT-OF-SPAIN

82. Incredibly, there are no facts relied upon and on which the applicant alleges that the claimant was mentally ill and ought to be detained. Obviously, there has been no satisfaction of the first limb of section 7 (2) (a) because there is no allegation of any of the factors set out therein. As a result, there would be no information from the applicant to satisfy section 6 of the MHA. The word

"paranoia" is not a fact, but seems to be a medical diagnosis which, obviously, the third defendant seems most unqualified to reach.

83. Dr. Johnson was questioned in cross-examination about this. She was first of all asked about what was meant by an urgent admission under the MHA and she opined, without any authoritative basis whatsoever:

> *"A. An urgent admission we consider to be an involuntary admission because the person is not voluntarily applying for admission to the hospital, someone is applying for admission on their behalf."*

84. Respectfully, this court seriously disagrees with this interpretation. No authority has been suggested to support this interpretation and, having regard to the authorities set out above under the general principles, it is clear that the court must give a narrow construction to the provisions of the MHA. That narrow construction requires the court to look at what is provided under section 6 as the basis for admission. That provides for "urgent admission" and not "involuntary admission". The difference is significant and material enough to have obviously restricted the less than methodical and comprehensive attention to the details of the provisions of the MHA. Obviously, an involuntary admission includes both urgent and non-urgent admissions and by lumping them both together, the purpose of the MHA in allowing the detention of a person in an urgent situation as defined under section 7 was overridden by the involuntary factor and designation.

85. Interestingly, Dr. Johnson employed a practice of speaking to the claimant's family who were present at the time i.e. the third, fourth and sixth defendants before speaking to the claimant. At that same time, according to her, Dr. Ezeokoli was speaking to the claimant, obviously with a view to obtaining the medical certificate required under section 7. She then spoke to him after and he denied all of the allegations that were made. She accepted that there were now two versions placed before and, according to her, it was standard procedure to accept the family's version. She said:

"Yes, because, if the family members deemed that he is—they are fearful of him and they believe that he is going to harm his family members, we have to take all of that into consideration."

86. Of course, this is a rather startling assertion as it is possible to have a situation where, as in this case, the detainee alleges a conspiracy against him and yet he is detained because of the conflict of the facts and the application of the said "standard procedure". From the evidence, the claimant's phone was taken away and he had no contact with an attorney and none was afforded to him nor was he informed of his right to one, nor was he given an opportunity to get one. Therefore, he is placed into detention/admission without access to legal advice and without any immediate remedy or chance to be heard – whether by habeas corpus proceedings or otherwise – in circumstances where there is a conflict on the facts. What if the claimant was absolutely right? There is no sworn statement from the family whether by way of statutory declaration or affidavit or otherwise so that there is no compelling reason or added motivation to tell the truth. The whole process seems rather stacked against the detainee from the onset.

87. It is for this reason, this court is sure, that the remedy was prescribed to be used only in urgent cases where there was some clear and present imminent danger to the detainee or his family, hence the prescribed nomenclature, "urgent admission".

88. Dr. Johnson was asked about what the third defendant put on the application under the rubric "The facts on which I base my allegation are as follows":

"Q. And you saw what that said?

A. Yes I did.

Q. And what did it say?

A. It said paranoid or paranoia.

Q. And that is the basis on which you were acting, you were supposed to act?

A. No, not necessarily that. I also, um, went according to what they told me and what I placed on the application. My, my, my information is quite clear during my interview and that is information that they gave me, and that is what I went according to. I cannot tell the mother what to put on her application. I cannot tell her what to do. She will put on the application what she deems is considered as facts by her. I wrote my facts.

Q. And her concern, what she put on the application is paranoia?

A. Right and that is what she decided to put.

Q. She never put anything about fear.

A. But she told me that she was fearful."

89. The claimant's attorney-at-law went on to probe what Dr. Johnson was told exactly about the third defendant being fearful. In that regard, Dr. Johnson was referred to a form filled out by her entitled "Initial Psychiatric Assessment". In that form, the presenting complaint was as follows:

"Paranoid – believes everyone is trying to kill him;

Angry;

Predicting the death of family members;

Hyper – religious – claims he is spiritual;

Talking to himself."

90. The history of that presenting complaint, as derived from information given by the third, fourth and sixth defendants, was stated as follows:

Mr. Singh claims he is the re-incarnate (sic) of Jesus Christ and Avatar. He can hear thoughts and insists his younger son will pass away before his older son. Approximately five years ago Mr. Singh visited Dr. Hypolite privately due to difficulty sleeping and hearing voices (describes voices as vibration in head). He never returned to Dr. Hypolite and symptoms and behaviour worsened. Mr. Singh is in contact with a lawyer – Mr. Arthur Douglas, who told family that Mr. Singh was in fact the re—incarnate of Jesus Christ and believes he is not sick. Mr. Singh denies all reports and accuses his family of telling lies. He believes his wife left him because of a spiritual journey he is currently experiencing."

91. Obviously, there was absolutely no mention whatsoever of the third defendant being fearful in this contemporaneous note. When she was pressed, Dr. Johnson attempted to fill in the gaps as follows:

> *"Q. So when you predict the death of somebody you are a danger to them, you say?*
>
> *A. They believe that he was.*
>
> *Q. They—but you didn't say that here.*
>
> *A. I documented in presenting complaint, as I said, that he was predicting the death of the family members.*
>
> *Q. Yes, so what of that would make them fearful that he would harm them?*
>
> *A. Well, that is what they believed. Even if I didn't document it, they believed that.*
>
> *Q. But he—did you ask them if he ever threatened them?*
>
> *A. His mother said that he was aggressive towards her.*
>
> *Q. That he was aggressive?*
>
> *A. Yes, and he was always angry.*
>
> *Q. Now where in that report is that?*
>
> *A. Well that would come after on the ward, but I don't have that documented here."*

92. Quite obviously, then, not only was the application form defective in that the third defendant did not indicate any facts upon which her allegation that the claimant ought to be admitted as an urgent admission could be based, but Dr. Johnson's own investigation showed absolutely no urgency or clear or imminent danger to his family or even to himself or to his health. She admitted that she made no inquiries as to the dates of any of the allegations set out in the history and therefore she clearly had no idea whatsoever of the immediacy of the problem.

93. Crucially, she admitted in cross-examination that the true purpose of her admitting the claimant was to observe him to determine whether what the

family had said had merit. As noble an intention as that may seem, that is not the ambit or the focus of the relevant provision of the MHA for urgent admission. As mentioned above, it is meant to protect from imminent danger, not for observation to determine the truth of allegations. That protective purpose; that immediate protective purpose; is obviously meant as an immediate stopgap to prevent an imminent tragedy. Quite obviously, there was no emergency which justified the claimant's detention.

94. The facts of the case as they played out over time would have allowed the third defendant to have sought alternate remedies which would have given the claimant an opportunity to be heard. An application could have been made for a Domestic Violence Order if she truly felt threatened and feared for her life. An application for injunctive relief could possibly have been filed with a plausible cause of action. In both cases, the claimant would have had an opportunity to be heard without being deprived of his liberty unnecessarily. Instead, once the correspondence heated up in November in relation to the challenge to the third defendant's authority with respect to the properties, the family "diagnosed" the claimant as suffering with a mental illness and took steps to place him in St. Ann's. Those steps were facilitated by what this court views, respectfully, as a complete misunderstanding of the legislation and the aims and objects of the same together with the statutory duties and officers who ought to have been involved in the process.

The Follow-up by Dr. Hypolite

95. The records put forward by Dr. Johnson and Dr. Ezeokoli show that the claimant was admitted somewhere around 8 AM on 7 December 2016. According to section 8 of the MHA, a follow-up had to have been done or caused to be done by the Psychiatric Hospital Director or the duly authorized medical officer within forty-eight hours so that it ought to have been completed by 8 AM on 9 December 2016.

96. The burden, therefore, once again fell on the first defendant to prove compliance with section 8. Unfortunately, there is no evidence of that before

the court. There was no evidence of who those functionaries i.e. the Psychiatric Hospital Director and or the duly authorized medical officer, were. Therefore the court has no evidence before it that either of the two functionaries did or caused to be done any such follow-up.

97. Dr. Hypolite said that he saw the claimant on the 9 December 2016 after 9 AM. Nowhere in the evidence for the first or second defendants is there any mention of the fact that he was qualified as the Psychiatric Hospital Director or a duly authorized medical officer under the definition of the MHA[32] or that he was acting under their direction. In any event, in cross-examination, Dr. Hypolite said it was not imperative for him to see the claimant within forty-eight hours since Dr. Sarpavarupu had already seen him prior. Again, none of these doctors names, including Dr. Hypolite, have been shown to be the authorized medical officers as prescribed by the MHA or as being medical officers who were caused to so act by any such authorized medical officer.

98. In any event, section 8 requires the duly authorized medical officer to come to the finding that he/she is *"**satisfied that the patient is in need of care and treatment in a hospital**"*. Again, there is no evidence of that satisfaction. Crucially, Dr. Hypolite himself said:

> *"**No. My rationale for detaining Mr. Singh was to ensure that the threat that we perceived, because we did not know how to interpret Mr. Singh's alleged statement of the prediction of his – the death of his children and his mother. That was the reason**."*
>
> ***[Emphasis added]***

99. That statement, to my mind, is not indicative of a satisfaction of the test prescribed by section 8. Instead, it is indicative of a need to get more information to understand if what was allegedly said about the claimant was a sign of mental illness. He went on to say that it appeared to him that the

[32] He described himself in his witness statement as being a Specialist Medical Officer at the St. Ann's Psychiatric Hospital since November 2013 to present and holds eminent qualifications in psychiatry and is also a lecturer in psychiatry at the University of the West Indies. His curriculum vitae left nothing to doubt in respect of his expertise in the field of psychiatry.

claimant's actions and behaviour were being heavily influenced by an external source. He called it a shared delusion and that was a suspicion that he had when he met with the claimant on 9 December. However, respectfully, the court is of the view that whomever may have been the duly authorized medical officer, or the person caused by the duly authorized medical officer, to make the decision under section 8, had to be *satisfied* of two things – that the patient **was in need of care and treatment** and that the care and treatment **had to be administered in a hospital**. In adopting a narrow construction, as mentioned before, suspicion cannot amount to satisfaction upon a common understanding of the word used and the context of the usage.

100. As a result, a conscious deliberation of the facts and the requirements of section 8 was required and the thought process emanating from the same had to have been exposed and explained**.** That would obviously show why the duly authorized decision-maker thought that he/she was satisfied that the claimant was in need of care and treatment and also why that treatment had to be administered in a hospital as opposed to being administered at home with outpatient clinic visits, etc. In this regard, there is absolutely no evidence.

101. Very importantly, though, the second defendant is the one who admitted that he was the person who decided to continue the detention of the claimant on 9 December. The claimant's attorney suggests that this is sufficient, along with the other allegation of conspiracy, in the circumstances, to extricate the second defendant's liability from under the umbrella of the first defendant's liability into his own additional separate personal liability, especially since he did not establish his authority to be involved in the detention process.

102. Attorney-at-law for the claimant submitted that this decision renders him as a joint tortfeasor responsible for the detention of the claimant at the hospital. In that regard, further authorities were provided by the claimant's attorney-at-law after the court had shared with the parties a preliminary draft judgment which set out some authorities that neither side had relied upon in order for the parties to comment on the same. Those authorities were:

102.1. ***Charlesworth on Torts*** 5th Edition at page 904;

102.2. ***Ryan v Fildes*** (1983) 3 All ER 517;

102.3. ***Lister v Rumford Ice and Cold Storage Co. Ltd.*** (1957) AC 555, 580.

103. This court had initially indicated its disposition not to agree with the claimant since the second defendant was acting as the servant and/or agent of the first defendant and the first defendant had accepted liability for the detention. The court had indicated that there was nothing to suggest that the second defendant had any personal interest or motivation in detaining the claimant. Instead, rightly or wrongly, it was obvious that he was acting in the course of his duty and not in his personal capacity.

104. However, having reconsidered the position after submitting the draft judgment to the parties for comment, the court has since looked at the authorities provided by the parties along with the learning in "Tort: The Law of Tort (Common Law Series)"[33] which provides as follows:

> *"[4.2] Tortfeasors are described as 'joint tortfeasors' in the following circumstances:*
>
> *….*
>
> *(3) where there is vicarious liability;*
>
> *(4) …"*

105. In this case, it was the second defendant who made the decision to detain the claimant even though he did not establish any authority to do so. The first defendant has accepted that liability. Clearly, however, it is the second defendant who made that decision and, even though the first defendant has accepted judgment in respect of that, the court is of the respectful view that the second defendant's decision made on 9 December was the reason for the

[33] Chapter 4 Joint and Several Liability in Tort/A Introduction, Definitions and the Basis of Liability/Joint tortfeasors

claimant's continued detention until his eventual release, thereby making him liable.

106. Obviously, the first defendant, being a legal entity, cannot act on its own but must act through its servants and or agents and therefore the admission of liability by the first defendant must be read as the acceptance of liability by the first defendant acting through its servants and or agents. All of the decision-makers at the time, including the second defendant, were acting in the course of their duty as employees and/or servants and/or agents of the first defendant in this latter case in relation to the continued detention. Therefore, having regard to what has been said before the court has found that the admission was unlawful; a decision that was made by Dr. Johnson as the servants and or agent of the first defendant. She is not a party to these proceedings.

107. The court also finds that the continued detention was also unlawful. The court goes on to find that the second defendant, who is obviously a party to the proceedings, is jointly liable for the decision to continue to detain the claimant. The situation is no different from an employee in a company getting involved in an accident during the course of his employment with both he and the company being held jointly liable. The same applies, as another example, in relation to an employee working for a company who is otherwise negligent such as in relation to occupier's liability by reason of which both the company and the negligent employees are held liable. In this case, the same applies.

108. The court is of the respectful view, however, that the second defendant cannot be held liable jointly together with the first defendant for the entirety of the eight days that the claimant was detained. His decision-making was not introduced until just after the second day had been completed so that, at most, his liability should be for 75% (6/8 days) of the quantum for the claimant's detention.

The First Defendant's submission to judgment

109. In submissions in reply, attorney-at-law for the first and second defendants submitted to judgment being given for damages for the wrongful detention of the claimant during the period of 7 December 2016 to 14 December 2016 thereby conceding on that point.

110. This court found it necessary to still set out its thinking in relation to this issue as it was of the respectful view that the deprivation of the claimant's liberty in the circumstances asserted in this case ought not to be repeated. As the court mentioned, it is likely that the statute was misunderstood and, in an effort to provide this court's thinking on the issue with a view to reducing the potential for recurrence, the court thought it necessary to still analyze the statute and the facts which were involved.

111. That analysis would also assist in understanding the court's thinking in relation to the issue of damages.

Conspiracy

112. The law on conspiracy in tort is described to some extent in ***Clerk & Lindsell on Torts*** 16th Edition at paragraph 15 – 21:

> *""A conspiracy consists… in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means[34] ." As a tort, conspiracy arises chiefly from a combination of which the "real purpose… is the inflicting of damage on A as distinguished from serving the bona fide and legitimate interests of those who so combine," resulting in damage to A[35] . A malevolent intent, though it may be evidence of an illegitimate purpose, is not an essential ingredient of the tort."*

113. It goes on to say at paragraph 15 – 22:

[34] Per Wiles J in ***Mulcahy v R*** (1860) L.R.3. H.L.306, 317
[35] Per Viscount Simon L.C in ***Crofter Handwoven Harris Tweed Co. v Veitch*** (1942) A.C.435, 443

"The tort requires an agreement, combination, understanding, or concert to injure, involving two or more persons….

Of the various words used to describe the conspiracy, "combination" has been preferred on the ground that "agreement" might be thought to require some agreement of the contractual kind, whereas all that is needed is a combination and common intention[36] *. But recent judicial descriptions still speak of "concerted action taken pursuant to agreement."*[37] *A party to a conspiracy need not understand the legal effect of it; but he must know the facts on which the combination is unlawful. But there must be a combination; lack of overt acts or an uncommunicated intention to join a conspiracy may show that there has not been an effective combination."*

114. Having regard to the evidence and what the court has before it, there is absolutely nothing put forward by the claimant to suggest that the second defendant was involved in any conspiracy whatsoever between himself and the third defendant, or any other person for that matter, in relation to his admission and detention. Despite the second defendant's sketchy recollection in relation to a meeting in November 2016 with him and the third defendant and others, there is no doubt that such a meeting was held. However, the court accepts his evidence that he was approached after the third defendant received the letters in November 2016 and advised that he had to see the claimant to come to some understanding as to his mental state but that he did not advise that that meant he had to be forcibly brought in. The court also does not accept that he was part of any agreement to have the claimant forcibly brought in.

115. From the evidence, it is clear that the plan to take the claimant into the St. Ann's Psychiatric Hospital involuntarily was solely that of the third to the sixth named defendants and they made that arrangement amongst themselves. Even when the claimant was taken to the Hospital, though it was mentioned to Dr. Ezeokoli that that was done at the recommendation of the second defendant, that is not indicative of any conspiracy involving the second

[36] Buckley LJ in ***Belmont Finance Corporn. v Williams Furniture Ltd.(No. 2)*** [1980] 1 All E.R.393, 404
[37] Per Lord Diplock in ***Lonhro Ltd. v Shell Petroleum Co. Limited*** [1982] A.C.173, 188

defendant. The court is clear that any such impression was a misconstruction and misunderstanding of the second defendant's advice – whether deliberately done or not. On a balance of probabilities, the court does not accept that any such recommendation was to have been executed without the claimant's co-operation because the court believes the second defendant when he said that he advised that the claimant would have had to have been persuaded to seek attention.

116. The burden of proof was on the claimant to establish this conspiracy but the inferences that were suggested in that regard were not sufficiently cogent as to convince the court to take such a dim view of the second defendant's alleged involvement. On top of all that was said, there was no obvious motivation for the second defendant to be caught up in this alleged conspiracy.

117. The court therefore rejects that suggestion and will not grant any relief in that regard. The issue of the second defendant's costs arises though. The court will have to consider whether the claim against the second defendant was reasonably brought.

118. Obviously, the suggestion of a conspiracy to commit an unlawful act is a very serious one and one can understand the claimant's concern having regard to the mention of the second defendant and also having seen him on the day of his admission. No doubt, the claimant was familiar with the second defendant and his ties with the fourth defendant, who was his patient. As a result, in all of the circumstances, and having regard to his admission at the psychiatric hospital where the second defendant was employed and having regard to the second defendant's involvement in the observation and assessment process over the following days after his admission, although his concern was understandable, he did not go far enough to establish liability.

119. Accusing the second defendant – a well-established and noted medical practitioner – of the conspiracy mentioned without actually providing any cogent evidence other than the suspicion of the same was, to my mind, ill

advised. In the circumstances, the court dismisses that aspect of the claim against the second defendant.

120. The court invited oral submissions on the quantum of costs of the dismissal of the case against the second defendant in totality at the hearing held on 21 July 2020 with the parties having benefitted from reading this court's draft at the time. Counsel for the second defendant opined that the sum ought to be $14,000 – being the costs payable on an unquantified sum for damages. Although not accepting that the case against the second defendant had not been proven, counsel for the claimant agreed with the quantification suggested by the second defendant's attorney-at-law. The court would bear this in mind in the final analysis of the issue.

Damages

121. The claimant was accosted from his bed, taken out of his home in handcuffs and detained for a period of eight days.

122. Apart from the manner in which he was taken from his bed on 7 December 2016, the court accepts that the claimant was handcuffed and taken into the ambulance and those handcuffs were only removed in the waiting room of the St. Ann's Psychiatric Hospital. There he was detained and questioned/interviewed. He was then removed in the same ambulance and taken to Ward 1 where he was kept behind locked doors with hospital attendants keeping him there. He spent the next eight days amongst other patients and he was not allowed to leave the area without permission from the hospital staff.

123. He was interviewed on the next day i.e. 8 December 2016 and again on 9 December 2016. The latter interview was conducted by the second defendant. He was then not interviewed or treated at all until his date of release on 14 December 2016.

124. He said that while at the hospital, he was placed among other inmates in a large room with metal bars at the windows and doors and security guards and other hospital attendants to prevent him from going outside of the room. His cellular phone was seized on 7 December but he was allowed to make phone calls to the third and sixth defendants only through the nurses. No mention was made of him seeking the opportunity to obtain legal advice or him being afforded that right.

125. He says that he was severely traumatized by the actions of the ambulance attendants when he was taken from his room and by the actions of the third, fourth, fifth and sixth defendants at his residence along with during the journey to the hospital and during the eight date of his incarceration. There was no description of how that opinion of trauma manifested in terms of factual evidence.

126. The court has already found that his arrest and conveyance to the St. Ann's Psychiatric Hospital by the concerted efforts of the third, fourth, fifth and sixth defendants was unlawful. The court has also already found, as acceded to by the first defendant, that the first defendant unlawfully detained the claimant. There is no evidence that the second defendant is in any way liable for his detention. That unlawful detention at the hospital was beyond the control of the other defendants so that they cannot be held liable for the eight days that he was so detained.

127. The attorney-at-law for the claimant has suggested that the authorities of ***Davidson v Chief Constable***[38] and ***M v Hackney London Borough Council & Ors***[39] support the contention that the liability of the third, fourth, fifth and sixth defendants in respect of the illegality of the arrest and detention by them and their servants and/or agents on the morning of 7 December also extended into the period from 7 December 2016 to 14 December 2016 when the claimant was detained at the St. Ann's Psychiatric Hospital. As a result, the

[38] [1994] 2 All ER 597
[39] [2011] 3 All ER 529

claimant contends that they are liable in damages to him for that period. Having considered those authorities, the court does not agree that they support this contention. As mentioned previously, the court finds that there were two periods of unlawful detention – the first being the arrest and unlawful detention by the third to sixth defendants and the second being the unlawful detention by the first defendant. There is nothing to suggest that the third to sixth defendants were involved in the decision making process which is statutorily imposed upon the first defendant's servants and/or agents and or representatives. Although they were consulted and interviewed at the hospital, the court cannot find sufficient evidence of collusion. The court is satisfied from the evidence before it that the claimant's relatives merely provided information which the first defendant's servants and/or agents and/or representatives used in the manner mentioned above to make a decision of their own to detain the claimant as an "urgent admission".

128. The court therefore finds that the third to sixth defendants are not liable for the claimant's detention at the St. Ann's Psychiatric Hospital. To hold otherwise would be to suggest that they were responsible for the decision that was made for that "urgent admission". The court is satisfied on a balance of probabilities that Drs. Johnson and Ezeokoli were solely responsible for that decision initially and that decision was continued by the first defendant's servants and/or agents and/or representatives solely thereafter, including the second defendant in particular. As was mentioned in ***Davidson***, the court is satisfied that the first defendant's servants and/or agents exercised their own judgments to detain the claimant after he was brought to them. They were under no obligation to follow the demands of the third to sixth defendants as it was open to them to disagree. The court in ***Davidson*** considered the test to be whether what the store security guard in that matter did and said went beyond the mere giving of information leaving it to the officers to exercise the discretion. Applied similarly, this court finds that the information provided by the third to sixth defendants, together with the claimant's estranged wife, did

not go beyond the mere giving of information. They obviously left it up to the doctors involved to make the final decision.

129. As a result, the court will consider the cases put forward by the parties in relation to the damages which arise.

The Claimant's Submissions

130. The claimant's attorney-at-law has sought damages to include an uplift for the breach of the claimant's constitutional rights. The court notes that the Honourable Attorney General was not made a party to these proceedings and the proceedings did not proceed for a claim for administrative relief under Part 56 of the CPR. The court is of the respectful view that the compensatory damages which are to be awarded would grant full relief to the claimant for the wrongs perpetrated against him. As a result, any resort to constitutional relief would be an abuse of process. In this regard, the court bears in mind the utterances of the Privy Council in ***Jaroo v. The Attorney General***[40] in which, at paragraph 39, it was stated:

> *"Their Lordships respectfully agree with the Court of Appeal that before he resorts to this procedure, the Applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of process to resort to it."*

131. On the question of general damages, the claimant's attorney-at-law placed reliance on the following cases:

131.1. ***Cheryl Miller v The NWRHA***[41] - in this case, the claimant was accosted in her place of work by employees of the NWRHA and taken to the St. Ann's Psychiatric Hospital where she was detained for 17 days until she

[40] [2002] 1 A.C. 871
[41] CV 2013 – 03971

was released as a result of habeas corpus proceedings. The circumstances, including the profound embarrassment she would have experienced as a result of being removed from her place of work in the full view of substantial members of the public, warranted damages in the sum of $450,000 inclusive of an element of aggravated damages according to the learned judge. She was also awarded the sum of $75,000 as exemplary damages.

131.2. ***Cpl. Keston Garcia v The Attorney General***[42] - in which the claimant was incarcerated for five days and received aggravated damages in the sum of $150,000 and exemplary damages in the sum of $60,000.

132. Based on these authorities, and the submissions made, claimant's attorney-at-law submitted that the claimant should be awarded the sum of $700,000 in general damages and $150,000 in aggravated damages.

The First and Second Defendants' Submissions

133. There was no consideration given by the first and second defendants' attorney-at-law to the issue of the quantum of damages in the 137 pages of his 243 paragraph primary submissions. The point was only addressed by him in his submissions in reply when the first defendant submitted to judgment as mentioned above.

134. The claimant's attorneys-at-law objected to the majority of the submissions in reply on the ground that the first and second defendants were not entitled to raise any new legal submissions in their reply. By doing so, the claimant argued that the first and second defendants would have an unfair advantage as the claimant would have no opportunity to reply and deal with the new matters

[42] CV 2018 - 03316

raised. Reliance was placed on the case of ***London Borough of Barking and Dagenham v Oguoko***[43] .

135. Bearing in mind the legal principles in relation to the issue of submissions in reply and the fact that attorney at law for the first and second defendants had not addressed the issue of damages at all in his submissions, the court only considered the authorities raised by the attorney-at-law for the first and second defendants in relation to the issue of the quantum of damages and disregarded other matters which were raised for the first time.

136. Attorney at law for the first and second defendants sought to rely on the following cases to deal with the issue of damages:

136.1. ***Razack Mohammed v The Attorney General***[44] - to suggest that nominal damages should be the appropriate measure. In that regard, this it was submitted that in this case, there was no public humiliation and the circumstances under which the agents and/or servants of the first defendant acted were in relation to balancing whether as a matter of urgency he should be admitted for the safety of himself and others. As a result, nominal damages should be limited to the sum of $1000-$2500. The court rejects this submission having regard to the details set out by the court above. As mentioned, the deprivation of one's liberty is a very serious matter and there was absolutely no evidence that any relevant statutorily appointed decision-maker had made a decision to detain the claimant nor was there any evidence of urgency.

136.2. ***Kyle Nero v The Attorney General***[45] - in that case, the court awarded the claimant general damages for false imprisonment inclusive of an uplift for aggravated damages in the sum of $75,000 for his six-day detention. It was submitted that the claimant was not humiliated,

[43] [2000] IR LR 179 in which it is said *"Appropriate comments in reply should be limited as would be the case had oral submissions been made the correction of factual errors and legal submissions on a new point of law or not previously raised."*
[44] CV 2009 – 02792
[45] CV 2017 – 02395

restrained and or denied the ability to interact with others on the ward as well as have family members visit. As a result, aggravated damages were not warranted.

136.3. ***Harold Barcoo v The Attorney General***[46] **-** the sum of $75,000 was awarded for malicious prosecution and false imprisonment for five days detention.

136.4. ***Ricardo Luke Fraser v The Attorney General***[47] - in which the sum of $100,000 for false imprisonment was awarded for five days detention

136.5. ***Martin Permell v The Attorney General***[48] - in which an award in the sum of $60,000 was made in general damages for unlawful detention of four days.

136.6. ***Chabinath Persad v The Attorney General***[49] - in which an award for unlawful arrest, false imprisonment for 15 days of detention and malicious prosecution inclusive of an uplift for aggravated damages was made in the sum of $110,000. That case referenced the further cases of ***Daren McKenna v Estate Constable Leslie Grant & Or***[50]***, Curtis Gabriel v The Attorney General***[51] and ***Ted Alexis v The Attorney General***[52]***.***

137. The attorney-at-law for the first and second defendants went on to submit that the claimant was not detained or restrained in any inhumane conditions, he was not observed to have been restrained by any handcuffs upon entry, he was recorded to appear to be comfortable on the ward and interacting well with the staff and other patients. The submissions went on to say that his movement within the ward and his assigned room was never restricted and he

[46] Referenced in the ***Kyle Nero*** case
[47] Referenced in the ***Kyle Nero*** case.
[48] CV 2017 – 02478
[49] CV 2008 – 04811
[50] CV 2006 – 03114
[51] HCA No S – 1452 of 2003
[52] HCA No S – 1555 of 2000

was allowed to mingle freely. He suffered no injury to his reputation nor is there evidence before the court of any damage to the claimant's character, standing and fame. At all times, his treatment was non-oppressive and get to what his well-being. It was further submitted that there was no oppressive or high-handed conduct on the part of the first and second defendants or any particular egregious behaviour that would justify an award of further aggravated or exemplary damages.

138. As a result, counsel for the first and second defendants suggested an award in the range of $70,000-$85,000 for his 7 day detention[53].

The Third to Sixth Defendants' Submissions

139. Counsel for these defendants relied upon the cases of ***Cheryl Miller, Roshini Maharaj (as executrix of Karamchand Maharaj) v SWRHA & Or***[54] and ***Russell David v Lisa Ramsumair-Hinds***[55] on this point.

140. In ***Maharaj***, the claimant, who represented the estate of her deceased husband who was the patient in question, claimed for the patient's detention for a period of seven days at the psychiatric ward of the San Fernando General Hospital. The patient was a Hindu pundit and was well known in this community and suffered the ignominy of being arrested and taken to the hospital in full view of others. The conditions were deplorable and the court awarded him $180,000 as general damages including an uplift for aggravation.

141. In the case of ***David***, the learned trial judge awarded the sum of $45,000 as compensation for damages for the eight hours of detention that the claimant in that matter experienced.

[53] The claimant alleged that the detention was in fact 8 days but the period of just over 7 days seems correct.
[54] CV 2009 – 04734
[55] CV 2012 – 04848

Conclusion on Damages

142. In the case of ***Uric Merrick v The AG & Ors***[56], Smith JA discussed the award of damages in a claim for the tort of false imprisonment. The principal heads, he said[57] were firstly compensation for the injury to liberty and secondly, compensation for the injury to feelings. The latter included the indignity, mental suffering, disgrace, humiliation and loss of reputation suffered. The learned Judge went on to describe awards for aggravated damages[58] :

> *"28. Aggravated damages are an element of the compensatory damages awarded to a claimant to cater for an element of aggravation of the injury to the claimant. These damages are separate and distinct from exemplary damages which are in the nature of a punitive award of damages against a wrongdoer." This*

143. Citing the Privy Council decision in ***Takitota v The Attorney General & Ors***[59], the learned judge ensconced the principle that aggravated damages were appropriate where "*the claimant would not receive sufficient compensation for the wrong sustained if the damages were restricted to a basic award*."[60]. This award, he recognized, was not required to be stated as a separate award but was to be included in the award of general damages[61].

144. There is no doubt that the claimant having been accosted from his bed and handcuffed and put into an ambulance would have suffered indignity and humiliation. The extent of it, however, was not elaborated upon by him.

145. The court is of the respectful view that the third, fourth, fifth and sixth defendants are liable to pay to the claimant damages for his unlawful arrest and unlawful detention on the morning of 7 December 2016 up to his admission at the St. Ann's Psychiatric Hospital. These defendants took the law

[56] Civ App No. 146 of 2009
[57] At paragraph 21
[58] At paragraph 28 et al.
[59] [2009] UK PC 11
[60] Ibid, at paragraph 11
[61] As endorsed in ***Thaddeus Bernard & Or v Nixie Quashie*** Civ App No. 159 of 1992 at page 5 and the Privy Council in ***Subiah v The Attorney General*** [2008] UKPC 47

into their own hands. There must have been an element of humiliation in being dragged from one's bed in handcuffs and placed into an ambulance. The court therefore awards the claimant the sum of $15,000.00 which includes an uplift for aggravated damages in light of the circumstances in which he was arrested and removed. That sum will carry interest thereon at the rate of 2.5% per annum from 25 July 2017 to date.

Costs against these Defendants

145.1. The issue of costs on this sum of $15,000.00 then arose. Taking its cue from the decision of the Court of Appeal in Civil Appeal No. S – 027 of 2013 ***Pan Trinbago Inc. v Keith Simpson & Ors,*** the court invited the parties to submit on this issue of the quantum of costs.

145.2. Counsel for the third to the sixth defendants asserted the applicability of Part 67.5 as being the appropriate measure i.e. prescribed costs on the award of $15,000.00. Counsel relied upon a plain reading of Part 67.5 (2)(a) to say that the rule made adequate provision for this instance. Counsel for the claimant, however, submitted that the claim against these defendants should be valued at $50,000.00 and costs awarded on the same when one considers all of the circumstances involved.

145.3. Having regard to the issues involved and the conduct of these defendants, including the fact that these defendants were instrumental in getting the entire process leading up to the claimant's detention up and running and doing so in a clandestine and unlawful manner by choosing to take the law into their own hands, the court will deviate from the general rule under Part 67.5. That is because, to this court's mind, the conduct of these defendants were particularly egregious in the whole scale of things and it seems manifestly unfair that the court must settle the issue of costs based only on the quantum realized by the claimant against them. Such a quantum based on prescribed costs on $15,000.00 does not tell the whole story and would be manifestly

unfair and contrary to the overriding objective in this court's respectful view.

145.4. As a result, since the court is of the respectful view that the general rule is not applicable and this is not a case for the payment of fixed costs under Part 67.4, the court will assess the costs in accordance with Part 67.12 pursuant to the provision of Part 67.3[62] of the CPR. In those circumstances, in default of agreement, the court directs that the issue of costs in relation to the third to sixth defendants be quantified before the Assistant Registrar of the Supreme Court.

146. The court is of the respectful view that there was no bona fides which the first defendant can cling onto to ameliorate its liability for damages for the claimant's unlawful detention for the 8 days he was detained. The deprivation of one's liberty is a serious matter and, notwithstanding the concerns expressed, it was insufficient to deprive the claimant of that liberty. The situation is exacerbated by the fact that from 7 December 2016 to 14 December 2016, the claimant received absolutely no care or attention in terms of this alleged concern for his mental well-being. After the interview on 9 December 2016, the next time he was interviewed was 14 December 2016 with no administering of medication. That was clearly because the first defendant and its servants and/or agents were not aware of what they were to treat the claimant for. That was made plainly obvious by the fact of his release on 14 December 2016 without any further diagnosis.

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[62] **Ways in which costs are to be quantified**

67.3 Costs of proceedings under these Rules are to be quantified as follows:

(a) where rule 67.4 applies, in accordance with the provisions of that rule; and

(b) in all other cases if, having regard to rule 66.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways:

(i) costs determined in accordance with rule 67.5 ("prescribed costs");

(ii) costs in accordance with a budget approved by the court under rule 67.8 ("budgeted costs"); or

(iii) where neither prescribed nor budgeted costs are applicable, by assessment in accordance with rules 67.1 and 67.12.

Section 49 of the MHA

147. The first defendant has suggested that the court ought to pay consideration to section 49 of the MHA which provides:

> *"49. No person is liable to any suit or action in respect of any act done under lawful direction and authority pursuant to the provisions of this Act or the Regulations unless it can be shown to the satisfaction of the Court that the person acted without good faith or reasonable care."*

148. Mr. Raphael for the claimant has rejected that on the ground that the section relates to individuals and not to organizations such as the first defendant.

149. Firstly, the court does not agree with Mr. Raphael's submission since Section 16 (1) of the Interpretation Act Chapter 3:01 provides:

> *"16. (1) Words in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons."*

150. Section 49 therefore can apply to the first defendant. That view is endorsed by the approach taken by the Honourable Mme. Justice Jones, as she then was, in ***Miller*** (supra) when she considered its application.

151. Having gone through the actions of the doctors involved, it is obvious that this court's view is that those actions were not done under lawful direction or authority pursuant to the provisions of the Act. Further, having regard to the analysis above, especially in respect of what this court sees as the intended application of the "urgent admission" protocol, the court cannot find that the doctors involved acted with good faith or reasonable care. There was clearly no evidence of urgency and Dr. Johnson admitted that she never even inquired as to when the incidents complained of had occurred. Even after, the first defendant's servants and/or agents, including the second defendant, continued to detain the claimant *for observation* – a power which they did not have in the circumstances in this court's respectful estimation.

152. The court therefore rejects the applicability of section 49 to ameliorate the first defendant's liability in this matter.

153. With respect to aggravated damages, there was no evidence of mental suffering, disgrace or humiliation or any of the other factors identified above which would justify an uplift for aggravated damages.

154. The issue of exemplary damages was not raised in the statement of case.

155. In the circumstances, the court will award the sum of $150,000 as general damages to be paid in the manner set out below by the first and second defendants to the claimant together with interest thereon at the rate of 2.5% per annum from 25 July 2017 to today's date.

The Order

156. Having regard to the foregoing, the court makes the following orders:

156.1. There will be judgment for the claimant against the defendants.

156.2. The first and second defendants are jointly liable to pay and shall pay to the claimant damages in the sum of $150,000.00[63] in the following percentages:

156.2.1. 100 % in respect of the first defendant;

156.2.2. 75% in respect of the second defendant;

together with interest thereon at the rate of 2.5% from 25 July 2017 to date;

156.3. The first and second defendants shall also pay to the claimant the prescribed costs of the action quantified by the court in the sum of

[63] The intention is that they are both jointly liable for the total sum of $150,000 but in the proportions/percentages mentioned. It is not intended to be a combined judgment for damages (exclusive of interest) of anything more than $150,000.00.

$33,192.12[64] applicable the same proportions as in the preceding paragraph;

156.4. The third to the sixth defendants, inclusive, shall pay to the claimant the sum of $15,000.00 together with interest thereon at the rate of 2.5% from 25 July 2017 to date;

156.5. The third to the sixth defendants, inclusive, shall also pay to the claimant his costs of the claim to be quantified pursuant to Part 67.12 of the CPR before the Assistant Registrar in default of agreement.

Post Script

157. It is obvious that, having regard to the procedure adopted, the authorities should consider the appointment of a Mental Health Advocate to assist persons detained under the MHA to ensure that their rights and freedoms and privileges are not compromised unduly during the detention. This is in keeping with the standard that one may expect from a State committed to the provisions of a written Constitution such as ours which guarantees certain basic rights and freedoms, including the freedom of thought and expression.

158. As was mentioned in ***Winterwerp***, supra, a difference in opinion on ideas and behaviours ought not to determine one's mental health. It is unfortunate that in today's society, the stigma of mental health is not addressed with the seriousness that it ought. We still call the St. Ann's Psychiatric Hospital the "mad house" and we still call persons with mental health issues "mad" or "crazy" – putting unfortunate derogatory labels on a serious problem. It is hoped that the dignity and integrity of the person can be maintained and preserved by an independent monitor, as suggested, to safeguard the rights of those unfortunate persons who carry these unacceptable labels.

[64] The court notes that the claimant's claim of conspiracy was unsuccessful against the second defendant but is not minded to excise any portion of the costs payable by the second defendant in that regard.

The Unnecessary Duplication of Documents

159. This court notes that there was an unfortunate unnecessary multiplication of copies of masses of the same documents. In this court's mind, it is absolutely essential for parties involved in the CPR process, and otherwise as well, to try to limit the impact one has on the environment by attempting, as best as possible, to minimize this unnecessary duplication, triplication and quadruplication, etc. of documents.

160. Time and time again, parties exhibit documents to their pleadings, then exhibit the same and other documents in discovery[65], then exhibit the same documents for a third and fourth time and sometimes fifth time when the same documents are exhibited to the witness statements of *each* party to the proceedings on a particular side. Then those same documents may find their way once again into an agreed or unagreed bundle of documents.

161. This court denounces such wastage of resources. The practice manifested itself in these proceedings – a practice which this court frowns upon.

/s/ D. Rampersad J.

[65] Part 28 of the CPR provides for the provision of lists and not bundles of documents, albeit some courts require bundles along with lists.