

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No CV 2008 – 04412**

**Between**

**HARRILAL GUNPAT**

**Claimant**

**And**

**P.C. DENNIS RAMLAL #12258**

**First Defendant**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Second Defendant**

**Before the Honourable Madam Justice Rajnauth-Lee**

**Appearances:**

Mr. S. Sawh holding for Mr. Anand Ramlogan for the Claimant.  
Miss Monica Smith instructed by Mr. Nairob Smart for the Defendants.

Dated: 11<sup>th</sup> January, 2010

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## REASONS

1. By Claim Form filed on the 7<sup>th</sup> November, 2008, the Claimant gave the following brief details of the claim and made the following claim:

### BRIEF DETAILS OF CLAIM

1. The Claimant, **HARRILAL GUNPAT** of 564 Rochard Road, Penal is and was at all material times an orderly/usher employed in the Judiciary of Trinidad and Tobago.
2. The First Defendant, **DENNIS RAMLAL** a police officer and member of the Trinidad and Tobago Police Service, was at all material times, acting in the course of his duty as a police officer.
3. The Second Defendant, **THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** is being sued pursuant to the provisions of the State Liability and Civil Proceedings Act and in its capacity as the Legal Representative of the State, as the employer of Police Officers in the Trinidad and Tobago Service.
4. On the 10<sup>th</sup> day of September, 2006, the Claimant was assaulted and battered by police officers attached to the Penal Police Station and maliciously charged by Police Constable (PC) Ramdeo regimental number 13717 (who was at all material times attached to the Siparia Police Station) at the Penal Police Station, for the following offences:
  - a) *Malicious damage one green Rossi jersey, the property of Mereenaries Sports Club valued*

*\$150.00 contrary to section 25(1)B of the Summary Offences Act, Chapter 11:02;*

*b) Resisting PC Ramdeo #13717 in the execution of his duty contrary to section 43 of the Summary Offences Act, Chapter 15:01*

*c) Using obscene language (in a public place) to the annoyance of persons on the said Street contrary to section 49 of the Summary Offences Act, chapter 11:02.*

5. On the 16<sup>th</sup> day of August, 2007, the matter was heard before her Worship the Honourable Mrs. Misir-Gosine at the Siparia Magistrate's Court, in the Republic of Trinidad and Tobago and dismissed in favour of the Claimant.
6. As a result of the matters aforesaid, the Claimant suffered mental distress, inconvenience, damages and loss.

**AND THE CLAIMANTS CLAIM:**

*As against the defendant:*

1. *Damages, including aggravated and or exemplary damages, for malicious prosecution and assault and battery.*
2. *Interest at such rate and for the period as to the court may seem just;*
3. *Such further and/or relief as to the Court may seem just.*
4. *Costs.*

2. A Defence was filed on behalf of both Defendants on the 10<sup>th</sup> December, 2008. Pursuant to the permission of the Court, the Claimant filed a Reply on the 19<sup>th</sup> February, 2009.
3. Pursuant to the Order of the Court, the parties filed and exchanged witness statements on or before the 30<sup>th</sup> June, 2009. A pre-trial review was fixed for the 22<sup>nd</sup> September, 2009.
4. On the 12<sup>th</sup> August, 2009, the Defendants filed an application for an extension of time and relief from sanctions in the following terms:

*The Defendants apply to the court for the following Orders*

1. *An Order pursuant to Part 27.9 of the Civil Proceedings Rules 1998 (as amended) for variation of the case management timetable, to extend the time for the Defendants' filing and serving of his witness statement*
2. *Additionally and/or alternatively, an Order pursuant the inherent jurisdiction of the Court extending the time for the Defendants' filing and serving of his witness statements*
3. *An Order of relief from sanction pursuant to Part 26.7 of the Civil Proceedings Rules, 1998 (as amended) to allow the Defendants to rely on his witness statement at the trial of this action;*
4. *That the costs occasioned herein be costs in the cause.*

*A draft of the Order that I seek is attached.*

***Grounds of the Application:***

*The defendants only got the relevant information after the time given by the court for filing of the witness statements.*

5. The application was supported by the affidavit of Mr. Nairob Smart sworn to and filed on the 12<sup>th</sup> August, 2009. According to Mr. Smart, after the date fixed by the Court for the filing of witness statements, he got a response from the Complaints Unit of the Trinidad and Tobago Police Service in respect of the complaint made by the Claimant to the Police Complaint Authority. According to Mr. Smart, he received information from one Ag. Inspector Paloo of the Complaints Unit South of the Police Complaints Authority that an investigation was conducted into the matter by one No. 11636 Sergeant Jackson. According to Mr. Smart, he obtained instructions from Sgt. Jackson. The instant application sought to obtain relief from sanctions and permission to use the witness statement of Sgt. Jackson.
  
6. The proposed witness statement of Sgt. Jackson was exhibited to Mr. Smart's affidavit. The proposed witness statement referred to three (3) documents, that is to say, a copy of a statement of the Claimant attached as CJ1; a copy of a medical report of Dr. Khandker attached as CJ2; and a copy of Sgt. Jackson's report attached as CJ3. However, no documents were attached to the proposed witness statement.
  
7. When the notice of application came up for hearing before the Court, the Court brought this to the attention of Attorneys for the Defendants, but no explanation for same was given to the Court.

8. Having looked at the proposed witness statement, I concluded that the proposed witness statement as it stood bore no relevance to the issues before the Court.

9. Further, in the view of the Court, the Claimant had quite properly objected to the application on the following grounds:

- (i) that the Claimant would be severely prejudiced if the application was granted.
- (ii) that the application did not comply with Part 26.7 of the Civil Proceedings Rules 1998, as amended.
- (iii) that the application was not made promptly.
- (iv) that there was no good explanation for the delay.
- (v) that the Defendants had not generally complied with previous directions.

10. The Court frowns on the approach of the Defendants. If the application had been granted, the Court would then have had to allow the Claimant to take objections to the witness statement and in fact to file further witness statements to rebut the allegations made therein. I could not see how justice would be so served. In all the circumstances of this case, I exercised my discretion in favour of the Claimant and refused the application.

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**Maureen Rajnauth-Lee**  
**Judge**