REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 86 of 2007

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN ASSESSMENT OF DAMAGES FOR BREACH OF CONSTITUTIONAL RIGHTS PURSUANT TO THE JUDGMENT OF THE PRIVY COUNCIL DATED 12TH OCTOBER, 2004

BETWEEN

ROBERT PEREKEBENA NAIDIKE

APPELLANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

RESPONDENT

PANEL: **A. Mendonça J.A.**
P. Jamadar, J.A.
G. Smith J.A.

APPEARANCES:

Mr. P. Knox, Q.C. and Mr. J. Mabota for the Appellant

Mr. N. Byam for the Respondent

DATED: 5th February, 2013.

JUDGMENT

INTRODUCTION

1. I have had the opportunity to read the draft judgments of Justices of Appeal Mendonça and Jamadar in this appeal. I differ with the opinions they express on two issues, namely:

   (i) The quantum of monetary compensation to be awarded to the Appellant for the breach of his constitutional rights; and

   (ii) The quantum of the award to vindicate the infringements of the Appellant's rights.

2. On these two issues I am of the view that:

   (i) The trial judge's award of $250,000.00 as compensation for the breach of the Appellant's constitutional rights was a proper estimate of the loss suffered and it ought not to be interfered with on appeal; and

   (ii) The trial judge's award of $50,000.00 to vindicate the infringement of the Appellant's rights was a proper estimate of the loss suffered and ought not to be interfered with on appeal.

ANALYSIS

(i) The trial judge's award of $250,000.00 as compensation for the breach of the Appellant's constitutional rights was a proper estimate of the loss suffered

3. I adopt the summary of the facts as contained in paragraphs 2—12 of the judgment of Mendonça J.A. and see no useful purpose in repeating them here.

4. On 19th December 2007, the trial judge awarded the Appellant the sum of $250,000.00 as compensation for his unconstitutional arrest and detention.

Justices of Appeal Mendonça and Jamadar propose to increase the sum of $250,000.00 to $350,000.00.

5. It is my opinion that the trial judge's award of $250,000.00 is a proper estimate of the compensation for the Appellant and this should not be increased to $350,000.00.

6. Before detailing my reasons I think it is important to reiterate the general principles upon which a court of appeal will interfere with an award of damages. Firstly, the appellate court must be satisfied that the trial judge has misdirected himself on the facts or on the law. Secondly, the trial judge's award must be a wholly erroneous estimate of the damage suffered.[1]

7. I will deal with the second proposition firstly, namely, whether the sum of $250,000.00 was a wholly erroneous estimate of the damage suffered.

At this stage, it is appropriate to bear in mind that:

> "***It is not proper for a court of appeal to substitute its own award merely because it considers that the judge's award is too high or too low. The gap between what the court of appeal considers to be within the range of a proper award, and the award actually made by the judge, must be so great as to render the latter a wholly erroneous estimate of the loss suffered.***"[2]

I will now demonstrate why I am of the view that the trial judge's award of $250,000.00 was not so low as to be a wholly erroneous estimate of the loss suffered.

8. In considering an appropriate award of damages, comparable cases are a useful guide to both the trial and appellate judges.

Further, in the process of examining comparable cases in this area of unconstitutional detention/ wrongful imprisonment two important factors are (i) the length of the detention and (ii) the correlation between the types of cases.[3]

9. The present matter is a constitutional law action premised upon the breach of the right to liberty. In this regard, similar constitutional law cases should be given precedence over common law cases.

The case of **Ronnie Abraham v The Attorney General** H.C.A. 801 of 1997 is a very good comparator to an award here. In **Ronnie Abraham's** case the applicant was wrongly

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[1] **Thaddeus Bernard and Another v Nixie Quashie** Civ. App. 159 of 1992 per de la Bastide C.J. at page 4.

[2] See footnote 1 above.

[3] **Josephine Millette v Sherman McNicholls** Civ. App. 14 of 2000 per de la Bastide C.J. at pages 5 and 6.

arrested on a warrant and detained for seventy days. His arrest and detention were declared unconstitutional. He suffered great inconvenience and distress because of the deplorable prison conditions he had to endure as well as the fact that his detention spanned over the Christmas and New Years seasons. He was awarded $125,000.00 as damages on 26th February, 1999.

Even though this case is of some vintage, it closely resembles the present matter in the two important areas of length of detention and the nature of the action. Namely, Ronnie Abraham's detention was seventy days and the Appellant's was for sixty nine days. Also **Ronnie Abraham's** case was premised on the breach of the right to liberty and detention in deplorable conditions. The only additional factor to be considered is the beating inflicted on the Appellant.

Even allowing for inflation and for the element of the beating inflicted on the Appellant, the award of $250,000.00 some eight years later is not so low an award to be an erroneous estimate of the loss of the Appellant. In fact it could be argued that the award of $250,000.00 is on the high side, but there has been no cross appeal or argument advanced on this issue. Even if the award in this case is high relative to **Ronnie Abraham's** case it would represent the upper end of an acceptable range of awards, not the lower end of the range. Consequently, there is no justification to further increase this award from $250,000.00 to $350,000.00.

10. Another comparable public law case is **Josephine Millette v Sherman McNicholls** Civ. App. 14 of 2000. The appellant, aged seventy two, stood bail for her son who failed to appear at court. The appellant's recognisance was forfeited and she was ordered to pay a fine or serve a term of imprisonment in default. This order was ultra vires. The appellant failed to pay the fine and was wrongfully imprisoned for one hundred and thirty two days. She brought successful judicial review proceedings which led to her release. While in prison she complained of being forced to do heavy work, which at her age was oppressive. Further, she suffered the trauma of not being able to care for one of her sons who was an invalid and a daughter who was mentally unbalanced. In fact, upon her release she found her invalid son in hospital in a very bad way and that son eventually died within a matter of days after her release. De la Bastide C.J. termed this matter as "***a very sad case***". In November 2000, an award of $145,000.00 as general damages was upheld.

The detention in **Josephine Millette's** case was much lengthier than that in this present appeal. Further, the situation in **Josephine Millette's** case was just as or even more tragic than in this appeal. Nevertheless, an award of $145,000.00 was considered appropriate.

Even allowing for inflation, it cannot be said that the award of $250,000.00 in the present appeal was so low as to be a wholly erroneous estimate of the loss suffered.

11. This in my view is enough to deal with this issue of this appeal but, for completeness, I will deal with three other issues raised in respect of the quantum of this award of $250,000.00. (a) Firstly, I will consider other “comparable” common law cases. (b) Secondly, I will consider some public law cases that Mendonça J.A. refers to and demonstrate why they are not truer comparators than **Ronnie Abraham’s** case and **Josephine Millette’s** case. (c) Thirdly, I will consider some public law cases that Jamadar J.A. mentions and show why I disagree with the conclusions he draws from these cases.

(a) Comparable common law cases

12. In **Ted Alexis v The Attorney General and Another** H.C.S.1555 of 2002/ H.C.A 3795 of 2002 the plaintiff was arrested and detained for two and a half months. Upon arrest he was beaten with a gun and a walkie-talkie. He succeeded in both malicious prosecution and false imprisonment claims. In March 2008 he was awarded $100,000.00 as damages for malicious prosecution and false imprisonment.

13. In **Curtis Gabriel v The Attorney General** H.C.S 1452 of 2003/ H.C. 2544 of 2003 the Plaintiff was assaulted by the police to extract a confession. Some 8 days after the assault he was still requesting to see a doctor for his complaints as a result of the assault. The Plaintiff spent eighty four days in custody. In June 2008, he was awarded $125,000.00 for his false imprisonment. Included in this figure was an award for aggravated damages. He was also awarded $50,000.00 as exemplary damages.

14. In **Chabinath Persad v The Attorney General and Another** CV 2008-04811 the Claimant was detained for seventy six days. He spent this time in deplorable prison conditions. He was also strip searched, witnessed serious violence and threatened at prison. In November 2011, he was awarded $110,000.00 as general damages for false imprisonment.

15. An examination of the three common law cases shows imprisonment for comparable lengths of time as this Appellant. In fact the complainants were all detained for a bit longer than this Appellant. In all the cases there were aggravating factors that made them comparable cases

to this Appellant's detention. Further, the **Ted Alexis** and **Curtis Gabriel** cases are close in time to this Appellant's case and would be good comparators for awards minus inflation.

These comparable cases show that a range of $100,000.00 to $125,000.00 would be considered appropriate compensation at common law for similar unlawful detention. So that even if the public law cases were somehow not good comparators or not sufficient comparators, the common law comparators would demonstrate clearly that the award of $250,000.00 for this Appellant would not be so low as to be a wholly erroneous estimate of this Appellant's loss.

16. Mendonça J.A. also relied heavily on two common law cases which are not really comparators to the present appeal.

17. The first case is **Victor Romeo v The Attorney General** CV 2007-04388. There is no written decision in this case. The pleadings and the affidavit of the claimant and the order of the Master were examined[4]. From these documents, the relevant facts are that the claimant was incarcerated pending a preliminary inquiry into a charge of incest. The charges were dismissed but the claimant remained unlawfully incarcerated for a further period of twenty nine days. The Master awarded the claimant the sum of $210,000.00 as general damages for false imprisonment, in March 2010.

18. The second case is **Kedar Maharaj v The Attorney General** CV 2009-01832. There is a brief written decision in this case. The claimant was incarcerated at a psychiatric hospital for many years. Eventually, a psychiatric hospital tribunal ordered his release. The claimant was not released and he commenced constitutional law proceedings. Pursuant to these proceedings a judge ordered his release. Even then the claimant was not released until he brought successful habeas corpus proceedings. The claimant was unlawfully detained for twenty nine days after the first order for his release. The claimant brought proceedings in tort for his unlawful detention and was awarded the sum of $280,000.00 as general damages, in February 2010. This sum of $280,000.00 included an unspecified award for aggravated damages.

19. These two cases are not good comparators to the present matter for the following two reasons. Firstly, they are common law cases and not public law cases. Secondly, though they represent shorter periods of detention, they give higher awards in a situation which I will

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[4] In the case of **Uric Merrick v The Attorney General** Civ. App. 146 of 2009.

describe as *sui generis* i.e. in a fact specific situation which is not of general application. They represent awards in a situation where a claimant is further deprived of his liberty after a lawful detention where there are extra aggravating factors like the distress, humiliation and inconvenience that flow from this particular situation (See also the recent case of **Uric Merrick v The Attorney General** Civ. App. 146 of 2009).

As comparators, **Victor Romeo's** case and **Kedar Maharaj's** case have less in common with this Appellant's case than the other cases previously cited.

In any event, even if one could use them as comparators, they suggest a range of $210,000.00 to $280,000.00 as compensation for this type of unlawful detention. The trial judge's award of $250,000.00 to this Appellant is well within this range and is not so low as to be a wholly erroneous estimate of the loss suffered.

(b) Public law cases referred to by Mendonça J.A.

20. With respect to other public law cases referred to by Mendonça J.A., I am of the opinion that these other cases are not true comparators to the present matter as they deal with peculiar aspects of the right to liberty which are not comparable to this appeal.

21. In **Anneson Stanisclaus v The Attorney General** H.C.A 1785 of 2000 the plaintiff was given a default sentence of imprisonment which was outside of a magistrate's jurisdiction. He appealed, the sentence was reduced and he was released, having served time on remand while awaiting his appeal. In fact he had been imprisoned for six hundred and ninety one days more than he should have been. He was awarded $225,000.00, in June 2007, for this unconstitutional imprisonment.

22. In **Perry Matthew v The Attorney General** H.C.A. 3342 of 2004 the plaintiff appealed a sentence of imprisonment but his appeal was not delivered to the Court in time by the Prison Authorities. As a result, his appeal was a nullity and he was wrongfully imprisoned for four hundred and nine days in excess of his sentence. In June 2007, he was awarded $350,000.00 as compensation for this unlawful detention.

23. Similarly in **Bryan Lynch v The Attorney General** H.C.A 1595 of 2008 the plaintiff's appeal was not delivered in time to the Court and his appeal was a nullity. He spent six hundred

and seventy two days in prison in excess of his sentence. In November 2009 he was awarded $450,000.00 as compensation for this unconstitutional detention.

24. These three cases bear little comparison to the present matter. They represent much lengthier detentions but in a fact specific situation of a criminal conviction followed by a delay in or a denial of the right of appeal. As I stated at paragraph 8 above, these cases lack two major comparators for unlawful detention, namely, the length of detention and the correlation of the type of case. **Ronnie Abraham's** case and the **Josephine Millette** case are more authentic comparators for the likely award in this case and having regard to my prior analysis of the precedent that these two cases provide[5], it cannot be said that the award of $250,000.00 was so low as to be a wholly erroneous estimate of the loss suffered.

(c) Some public law cases considered by Jamadar J.A.

25. In his judgment, Jamadar J.A. expressly recognizes that based on precedent, the trial judge's award of $250,000.00 would not be too low an award in this appeal.[6] However, at paragraph 37 of his judgment, Jamadar J.A. accepts certain statements of Mummery L.J. in **Vento's** case[7] which were adopted by the Privy Council in **Romauld James v The Attorney General of Trinidad and Tobago**[8]. These statements maintain that compensation for non-pecuniary loss in a constitutional law case is "***a philosophical and policy exercise more than a legal or logical one***". This suggests that policy and philosophical considerations can, and in this case should, bypass precedent to allow an upgrade of the award of $250,000.00 to $350,000.00.

26. I disagree with this argument. In every case where compensation is being considered the award must be fair and reasonable. One of the best gauges of fairness and reasonableness is precedent in the form of earlier decisions. In fact in the very paragraph in the **Vento** case which is cited by Jamadar J.A., Mummery L.J. stated:

> "***The award must be fair and reasonable, fairness being gauged by earlier decisions...***"

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[5] See paragraphs 9 and 10 above.
[6] See paragraph 32 of the judgment of Jamadar J.A.
[7] **Vento v Chief Constable of West Yorkshire Police** [2003] ICR 318 at 331 paragraph 50.
[8] P.C.A No. 112 of 2009 at paragraph 28.

In a case where there are no true comparators or precedents, policy and philosophical considerations may be properly used as guidelines to an appropriate award; but in a case, as in this appeal, where there are true comparators (as Jamadar J.A. agrees) fairness and reasonableness would seem to demand that these concrete comparators be given precedence over the more nebulous guidelines of policy and philosophical considerations.

27. At paragraph 38 of his judgment, Jamadar J.A. refers to the seminal decision of **Maharaj (No. 2)**[9]. In Trinidad and Tobago this case is regarded as the font of compensatory damages in a constitutional motion. In that case a barrister-at-law was imprisoned for seven days in breach of his constitutional rights. In 1978 he was awarded $25,000.00 as compensatory damages where there were no special aggravating circumstances.

Jamadar J.A. suggests that this case is now so ancient that the time has come to reconsider and upgrade the awards of compensatory damages which can be traced back to the decision in **Maharaj (No. 2)**.

28. I disagree. There is no doubt that the compensatory awards in constitutional law cases have been significantly upgraded over time. Indeed, Jamadar J.A. does not even suggest the contrary.

While the parties have not put forward a thorough, or indeed any, analysis of the upgrade in cases over time, my familiarity with these cases suggests that there has correctly been a significant yet cautious and incremental increase in these awards over time.[10] A sudden unexplained jump of $100,000.00 (from $250,000.00 to $350,000.00) as is suggested by the majority seems arbitrary and unjustified.

29. The trial judge's award of $250,000.00 based as it was on precedent, was a proper estimate of this Appellant's loss and ought not to be increased.

30. In all the circumstances, when the cases are analysed I am of the view that the award of $250,000.00 as monetary compensation for the deprivation of liberty of this Appellant cannot be faulted as being so low as to be a wholly erroneous estimate of the loss suffered. There is no justification for increasing this award at all, let alone to increase it to $350,000.00.

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[9] **Maharaj v The Attorney General of Trinidad and Tobago (No. 2)(P.C.)** (1978) 30 WIR 310.

[10] As to this cautious and incremental approach to damages see the judgment of Archie J.A. in **Alphie Subiah v The Attorney General** Civ. App. 10 of 2005 at paragraph 15.

Was there a misdirection on the facts or the law?

31. As I stated at paragraph 6 above, the other principle upon which a court of appeal will interfere with an award of damages is where the trial judge has misdirected himself on the facts or the law.

Mendonça J.A. has stated that the trial judge failed to take into account the Appellant's loss of reputation in calculating the damages payable to him.[11] This, Mendonça J.A. states, is an error of law which entitles the Court of Appeal to interfere with the award of $250,000.00.

I do not share this opinion. I am of the view that the trial judge did consider loss to the Appellant's reputation in calculating the damages. In any event, even if this was not done I am of the view that the award of damages was so far above the low end of the awards in similar cases that it is not a wholly erroneous estimate of the loss suffered. That being the case there is no need to increase the trial judge's award.

32. Before detailing my reasons I wish to state that I fully accept the correctness of the decision of Hamel-Smith J.A. in **Crane v Rees** Civ. App. 181 of 1997/ Civ. App. 201 of 1997. Damages per se are not available in a constitutional law case for loss of reputation. It is not a claim at common law where the principles for awarding these damages have been crystallised.[12] A constitutional law claim should not be stymied by common law principles. Nevertheless, this does not mean that loss of reputation cannot be considered in a constitutional law case. It may be a factor to be taken into account in determining the distress and inconvenience suffered by a claimant. It is not however to be considered as a separate head of damages as in a common law claim.

33. In this appeal, I am of the view that the trial judge did consider loss to the Appellant's reputation. Even though these specific words are not used, the judge did consider factors affecting reputation such as "***the public humiliation***", "***the humiliation in front of friends***", "***the belittling of the faith of Dr. Naidike (being that he held himself out to be a minster of God)***" and the fact that "***a charge was laid against Dr. Naidike which he had to defend.***" These are matters which affect reputation. In fact the judge did not find that she did not or could not take

[11] See paragraph 68 of the judgment of Mendonça J.A.

[12] See **McGregor on Damages 14th ed.** at paragraph 62.

loss of reputation into account. In the light of the matters that she did consider, I do not presume that she failed to take the Appellant's loss of reputation into account.

34. In any event, even assuming that the trial judge did not take the Appellant's loss of reputation into account, the award of damages in this case is far over the low end of an acceptable award (namely $125,000.00). Therefore, even factoring in an additional element of distress and inconvenience through loss of reputation, the award of $250,000.00 is not so low as to be a wholly erroneous estimate of the loss suffered by this Appellant. There is no need to interfere with this award, much less increase it to $350,000.00.

(ii) *The trial judge's award of $50,000.00 to vindicate the infringement of the Appellant's rights was a proper estimate of the loss suffered*

35. As Mendonça J.A. observed, there is no issue in this appeal that a vindicatory award is required over and above the compensatory award. The only issue is whether the trial judge's vindicatory award of $50,000.00 ought to be increased.

Justices of Appeal Mendonça and Jamadar propose to increase this sum of $50,000.00 to $75,000.00.

36. It is my opinion that (a) this vindicatory award of $50,000.00 is a proper estimate of the loss suffered and ought not to be increased; and (b) the suggested increase of this award from $50,000.00 to $75,000.00 contains an unacceptable element of duplication.

(a) The sum of $50,000.00 is a proper estimate of the loss suffered

37. Before I detail my reasons I with to reaffirm certain principles.

Firstly, I accept the observations of Justices of Appeal Mendonça and Jamadar that the purpose of this additional vindicatory award is not to punish a defendant— although it may cover the same ground in financial terms as an award of exemplary damages. It is a sum awarded over and above the compensatory award, to reflect the sense of public outrage, emphasize the

importance of the constitutional right and the gravity of its breach and to deter further breaches. Such a sum should not be token or nominal.[13]

I wish to add that while an award of vindicatory damages should not be token or nominal it should "***not necessarily be of substantial size***".[14] Indeed as Archie J.A. opined at paragraph 17 of his judgment in **Alphie Subiah v The Attorney General** Civ. App. 10 of 2005, "***In this jurisdiction, awards for punitive damages tend to be conservative.***" In this appeal, it cannot be said that the award of $50,000.00 was token or nominal, or anything other than a conventional sum which falls within the normal range of awards for vindicatory damages.

38. Secondly, it is always necessary to remember that this is an appeal against the quantum of damages awarded by a trial judge.

As I stated at paragraph 6 above, it is not proper for the Court of Appeal to interfere with or to substitute its own award merely because it considers that the trial judge's award was too high or too low. The Court of Appeal must be satisfied that the trial judge's award was so outside the range of a proper award that it is a wholly erroneous estimate of the loss suffered. As I will demonstrate below I am of the view that the trial judge's award of $50,000.00 as vindicatory damages was not so low as to be a wholly erroneous estimate of the loss suffered.

39. In detailing my reasons for concluding that the trial judge's award of $50,000.00 for vindicatory damages was not a wholly erroneous estimate of the loss suffered, I will refer to comparable cases. These cases provide an acceptable range for an award of vindicatory damages.

40. In **Subiah's** case the appellant was ignominiously dragged through the streets of Port-of-Spain and further manhandled at the Police Station. The arrest and detention were described as "***gruelling***" and "***repulsive***". The conduct of the police was "***unacceptable***" and left a "***debilitating effect***" on the appellant. In November 2008, the Privy Council estimated a proper vindicatory award of $35,000.00 for this appellant.

41. In **Siewchand Ramanoop v The Attorney General** H.C.S. 47 of 2001 the appellant was severely beaten and manhandled by police who wanted to teach him a lesson for "***interfering***

[13] See paragraph 88 of the judgment of Mendonça J.A. and paragraph 42 of the judgment of Jamadar J.A.

[14] See **The Attorney General of Trinidad and Tobago v Siewchand Ramanoop** P.C.A. 13 of 2004 per Lord Nicholls at paragraph 19.

with the police". It was an extreme case of an egregious and unwarranted attack by the police on an individual. In February 2008 an award of $60,000.00 was made for this conduct.

42. In **Chandardat Soogrim v The Attorney General**[15], the Claimant was arbitrarily arrested and detained by the police in circumstances which caused him shame. In December 2010, he was awarded $12,500.00 as vindicatory damages for this.

43. The actions of the police and the immigration authorities in this appeal were indeed egregious, repulsive and unacceptable and left a debilitating effect on this Appellant. The nature of the conduct of the State in this appeal which justifies a vindicatory award is roughly comparable to that of the police in **Subiah's** case and **Ramanoop's** case. It is more deserving of condemnation than **Soogrim's** case. Nevertheless, at the date of the award (December 2007) and when a comparison is made to the cases cited, an award of $50,000.00 in vindicatory damages would seem to be at the higher end of the scale. However, it is not inappropriate. It is certainly far above the low end of the awards in the cases cited above. In any event, the award of $50,000.00 is not so low an award to be a wholly erroneous estimate for this specific award of vindicatory damages. A fortiori, the decision to increase the vindicatory award to $75,000.00 is unjustified.

(b) The suggested increase of this award contains an unacceptable element of duplication

44. It must always be borne in mind that this vindicatory award is not to be confused with the compensatory award. The vindicatory award is a sum awarded in addition to, or over and above a compensatory award. Therefore in considering the factors for this award' "***One must avoid duplication since the 'circumstances' are usually addressed in some measure by the common-law concept of aggravated damages (which are compensatory in nature)***".[16]

As I will demonstrate below, the decision of Justices of Appeal Mendonça and Jamadar to increase the award of vindicatory damages includes a fair amount of duplication with the compensatory award and is further unjustified.

[15] H.C.A 3755 of 2007, CV.2007-3755, H.C.A.990 of 2005.
[16] See paragraph 10 of the judgment of Archie J.A. in **Subiah's** case.

45. I find that the opinion of Kangaloo J.A. in **Subiah's** case is instructive in determining where there is duplication of the compensatory and vindicatory awards. At paragraph 18 Kangaloo J.A. opined that circumstances such as the length of unlawful detention and "***the treatment meted out to the applicant during unlawful detention which results in humiliation and injured feelings***" are covered by the aggravated award of damages. This in turn forms part of the compensatory award and should not be recoverable as part of the vindicatory award.

Both Justices of Appeal Mendonça and Jamadar used these same matters in arriving at their decision to increase the vindicatory award. In so doing they have caused an unjustified duplication of this award with the compensatory award.

46. Specifically at paragraph 89 of his judgment, in rationalizing the increased award of vindicatory damages, Mendonça J.A. restated the circumstances of the arrest of the Appellant and the conditions the Appellant experienced during his detention as factors justifying the increase. These were already considered in respect of the aggravating features referred to by the trial judge[17]

47. In his decision on the vindicatory award, Jamadar J.A. considered "***the circumstances surrounding the arrest and initial treatment of Dr. Naidike***" in the presence of his two year old daughter (at paragraph 44) as well as the treatment he received from the police and the appalling and deplorable conditions of his detention (at paragraph 46) in justifying the increased vindicatory award. But these had already been considered as aggravating factors in respect of the compensatory award.[18]

48. In these circumstances the duplication between the compensatory and vindicatory awards further negatives the decision to increase the vindicatory award by $25,000.00. The trial judge's award of $50,000.00 was a proper estimate of the loss.

[17] See the trial judge's judgment at paragraph 17 and see also the judgment of Mendonça J.A. herein at paragraphs 15 and 85.

[18] See note 17 above.

CONCLUSION

49. I accept the opinions of Justices of Appeal Mendonça and Jamadar with respect to the other items of damage claimed. Therefore I would have assessed the damages for this Appellant as follows:

(a)	Monetary compensation for violation of the right to liberty under section 4(a) of the constitution:	$250,000.00
(b)	Vindicatory Damages:	$ 50,000.00
(c)	Special Damages:	
	I. Repayment for raising security:	$ 5,092.82
	II. Cost of habeas corpus application:	$ 4,000.00
	III. Clothing cost:	$ 750.00
	Total:	$309,842.82

G. Smith
Justice of Appeal