

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-03089

BETWEEN

BISHAM SEEOBIN

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

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Before: Master Alexander

Appearances:

For the claimant: Ms Cindy Bhagwandeem

For the defendant: Ms Keisha Prosper

DECISION

I. BACKGROUND

1. On the 11<sup>th</sup> December 2006, five plain clothes police officers went to the claimant's home with a warrant to search for stolen computers. No computers were found but the claimant was questioned about a newly repaired Gould water pump found at his home and for which he could not produce the receipt evidencing purchase. The officers seized the water pump and arrested the claimant, taking him to the San Fernando Police Station where he was interrogated about the stolen computers, which ended with him being struck three times on the head with a book and slapped by one of the police officers. The claimant was stripped of his clothes and placed in a prison cell.

2. On the 14<sup>th</sup> day of December 2006, the claimant was charged for stealing one Gould water pump, the property of the South West Regional Health Authority, valued at \$7,808.00 on a date unknown during the period of January and December 2006. The charge against the claimant was eventually dismissed by Her Worship Mrs Chankar on the 21<sup>st</sup> day of November 2007 due to the non-appearance of the complainant. As a result of this ordeal, the claimant alleges that he suffered loss and damage and has been embarrassed and humiliated.
3. The claimant issued legal proceedings against the defendant on August 24<sup>th</sup> 2009 claiming damages including aggravated and/or exemplary damages for assault and battery, false imprisonment, malicious prosecution and/or detainee and conversion of the claimant's Gould water pump and other household items and tools as well as interest and costs. He also sought various declarations and relief for breaches of his constitutional rights, which he did not pursue at the assessment.
4. The claimant pleads the following particulars of malice:
  - i. The claimant was charged for stealing the pump but the officers had no evidence of him stealing the pump;
  - ii. The officers needed a reason to charge the claimant as he had already been detained for approximately 66 hours.
5. On 8<sup>th</sup> June 2010 judgment was entered by des Vignes J in terms as follows:

*IT IS ORDERED that leave be and is hereby granted to the claimant to enter judgment in default of defence for the following relief:*

  1. *Judgment be entered against the defendant in default of defence;*
  2. *Leave be granted to the defendant to cross examine any witness called on behalf of the claimant and make submissions to the court pursuant to Part 16.3(4) of the CPR 1998 as amended at the assessment of damages;*
  3. *Witness statements in regard to damages to be filed and exchanged by the 1<sup>st</sup> day of October, 2010 and in default thereof no evidence is to be called by the defaulting party.*
6. Having failed to file a defence, there was, therefore, no case put forward by the defendant in defence of this claim.

7. Pursuant to the order by des Vignes J above, the defendant was granted permission to make submissions on quantum of damages payable. However, the submissions as filed by the defendant for this assessment sought to put into issue whether the cause of action, malicious prosecution, is supported by the facts as contained in the statement of case. Counsel for the defendant submitted that as the default judgment against it was entered on the basis of facts pleaded in the statement of case, where the claimant has failed to plead material facts but later seeks to incorporate new facts in his witness statement, then those facts should not be considered in determining compensatory damages.

#### **Factors to consider at an assessment**

8. In *Michael Laudat, the Attorney General of the Commonwealth of Dominica v Danny Ambo*<sup>1</sup>, the Appeal Court was called upon to determine the issues which a master was required to consider at the assessment hearing and stated:

*Ordinarily, at an assessment of damages hearing the court would not enquire into matters of liability because the defendant, having failed to file an acknowledgement of service and/or defence is taken to admit liability as pleaded. At the assessment of damages hearing, the court is not required to re-open the application or request for default judgment; and it would not be appropriate to go behind the default judgment order or assess the merits of the pleadings in relation to the cause of action while the default judgment stands. The issue of the defendant's liability having been settled by the default judgment, the only issue for the court is how much in compensatory damages is due to the claimant upon the evidence adduced by the claimant in proof of any special damages claimed and general damages. Where damages for any pleaded causes of action have not been proven by the evidence, the claimant would generally not be entitled to damages under that head of claim.*

9. It is clear that the responsibility of the assessing court is to determine compensatory damages due to the claimant. Thus, it is accepted that the issue of liability for malicious prosecution was determined when judgment was entered in the claimant's favour. It is also trite law that the claimant must, in an action for malicious prosecution<sup>2</sup>, expressly allege malice as a separate and independent ingredient in his pleadings in addition to the want of reasonable and probable

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<sup>1</sup> *Michael Laudat, the Attorney General of the Commonwealth of Dominica v Danny Ambo* HCVAP 2010/016

<sup>2</sup> The essentials which a claimant must show to establish a claim for malicious prosecution were set out in the case of *Wills v Voisin* (1963) 6 WIR 50 as: (a) That the law was set in motion against the claimant on a charge for a criminal offence; (b) That he was acquitted of the charge or that otherwise it was determined in his favour; (c) That the prosecution set the law in motion without reasonable and probable cause; and (d) That in so setting the law in motion the prosecution was actuated by malice.

cause. Counsel for the defendant has submitted that the pleadings for malicious prosecution were defective so no compensation should attach for this limb as damages are to be awarded based on the pleaded case. The claimant has given details and/or further particularization of his allegation of malice in his witness statement. Counsel for the defendant has asked that it be considered whether a witness statement can cure the defects or missing elements of pleadings in a statement of case. To my mind, the nature of a statement of case is to allow the defendant to know what case he has to answer. The degree of particularization required will depend on the facts of each case. In the instant case at bar, malicious prosecution was stated in the statement of case and particulars were provided. In *Lennox Quashie v AG of Trinidad and Tobago*<sup>3</sup>, a proper claim of malicious prosecution was made out where Justice Hosein noted, “[I]n my view, the preferment of the charge of obscene language was introduced to justify the arrest of the plaintiff and those facts together with the circumstance of holding the plaintiff for fourteen (14) hours handcuffed and the infliction upon him of various blows together demonstrate that the defendants were actuated by malice.”

10. Although full or extensive details of malice were not pleaded under the heading “particulars of malice”, a reading of the statement of case as a whole aptly sets out the essentials of the offence of malicious prosecution and I find compensation for the offence to be justified. I, therefore, do not agree with counsel for the defendant that the claimant has sought to insert new facts in his witness statement that were not mentioned in his statement of case. Rather, he has effectively utilized his witness statement to furnish further details of the incident. See *Charmaine Bernard v Seebalack*<sup>4</sup>. I will now proceed to assess the damages due to this claimant.

## II. SPECIAL DAMAGES

11. Paragraph 13 of the statement of case sets out the claim for special damages as:

i.	One Gould Water Pump	\$1500.00
ii.	Cost of Legal Representation	\$2500.00
	<b>TOTAL</b>	<b>\$4000.00</b>

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<sup>3</sup> *Lennox Quashie v AG of Trinidad and Tobago* HCA No. 30/1987.

<sup>4</sup> *Charmaine Bernard v Seebalack* [2010] UKPC 15

12. It is well accepted that special damages must be specifically pleaded and proved. The claimant has provided the documentary proof with respect to the cost of the water pump. The defendant argues in his submissions that there would have been some depreciation in cost. The defendant does not take into account that this was a newly repaired water pump and that monies had been spent to repair it, for which the claimant makes no claim. Bearing this in mind, I award the sum of \$1,500.00 for the Gould water pump.
13. With respect to the claim for legal representation, the claimant provided a letter from his previous attorney dated 21<sup>st</sup> January 2008 annexed to the statement of claim and witness statement that referred to the dismissal of his matter at the Magistrate Court. This letter was silent as to the cost of legal representation at the magisterial level. There was no other supporting evidence either in the form of a receipt or invoice for legal services brought to this court. It is the responsibility of the claimant to prove his case and not to expect that his word would be taken as the evidence of payment. This claim is disallowed.
14. The total award for special damages is **\$1,500.00** for which the requisite proof was furnished.

### III. GENERAL DAMAGES

15. The primary object of an award of damages is to compensate the claimant for the harm done to him. The secondary object is to punish the defendant for his conduct of inflicting harm. In determining the award to compensate the claimant, the Privy Council in *Tamara Merson v The Attorney General of the Bahamas*<sup>5</sup> recommended that a distinction be made between compensatory damages (which would include aggravated damages) and exemplary damages and the elements attributable to these awards are to be identified.
16. In making the compensatory award, account shall be taken of the aggravating features. The normal practice is that one figure is awarded as general damages. As noted in the case of *Thaddeus Bernard, Airports Authority of Trinidad v Nixie Quashie*<sup>6</sup>, de la Bastide CJ (as he then was) explained, “[T]hese damages are intended to be compensatory and include what is referred to as

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<sup>5</sup> *Tamara Merson v the Attorney General of the Bahamas* PC Appeal 61 of 2003

<sup>6</sup> *Thaddeus Bernard, Airports Authority of Trinidad v Nixie Quashie* CA Civ 159/1992

*aggravated damages, i.e. damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have suffered. Under this head of mental suffering are included such matters as the affront to the person's dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort."*

17. Based on the various heads of damages claimed, I find it most apt to deal with each in turn.

Damages for assault and battery, false imprisonment, malicious prosecution and/or detainee and conversion including aggravated and/or exemplary damages

- **False imprisonment and malicious prosecution**

18. A false imprisonment is a complete deprivation of liberty without lawful cause. Nowhere on the facts is there any lawful justification for the claimant's arrest. The claimant was arrested at his home and taken to the San Fernando Police Station without being told the reason for his arrest. From the facts, it is clear that the claimant was falsely imprisoned and is entitled, therefore, to be compensated for loss of liberty and injury to his reputation and feelings. As noted in **McGregor on Damages**<sup>7</sup>, "*The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and it is left much up to the jury's or judge's discretion. The principal heads of damage would appear to be the **injury to liberty**, i.e. the loss of time considered primarily from a non-pecuniary viewpoint and the **injury to feelings**, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status."*

19. Relevant heads of damage in cases of malicious prosecution include the fact of the malicious prosecution, the fabrication of evidence, injury to the reputation of the claimant that would naturally flow, loss of liberty, fear, and distress. Attorneys for both parties have agreed on the award of a universal figure for both malicious prosecution and false imprisonment.

20. The claimant has claimed aggravated damages. Such damages can be awarded where there are aggravating features about the case which would result in the claimant not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating

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<sup>7</sup> McGregor on Damages 18<sup>th</sup> Edition para 37-011

features in this case include humiliating circumstances at the time of arrest. It also covers any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in an insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution. The claimant has set out the basis of his aggravated damages claim as including the fact that:

- his house was ransacked and several household items were seized and never returned;
- he was arrested in full view of his neighbours and family members;
- he was claustrophobic and was detained in a filthy cell in his underwear;
- he was forced to sleep on the floor and had to defecate in front of other prisoners;
- he was ridiculed by police officers and prisoners and never fed during his detention;
- he was also denied his constitutional rights to a telephone call and his right to retain and instruct a legal advisor.

21. Lord Bingham in *Alphie Subiah v The Attorney General of Trinidad and Tobago*<sup>8</sup> had this to say on aggravated damages:

*Such compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable (contrary to the practice commended by the Court of Appeal of England and Wales for directing juries in Thompson v Commissioner of Police of the Metropolis [1998] QB 498, 516 D-E) for the allowance for aggravated damages to be separately identified. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question to the extent that this is not already reflected in the compensatory award. As emphasised in Merson, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression.*

22. In this matter, I believe that a global award of general damages inclusive of aggravated damages will adequately compensate the claimant and achieve a just result between the parties.

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<sup>8</sup> *Alphie Subiah v The Attorney General of Trinidad and Tobago*, Privy Council Appeal No 39 of 2007 paragraph 11

23. Counsel for the claimant cited the following cases and suggested an award of \$85,000.00 for false imprisonment and malicious prosecution:

- ***Seemungal v The AG of Trinidad and Tobago, Rougier***<sup>9</sup> where in May 2010 an award of \$100,000.00 was made for a period of 12 days false imprisonment. This includes an element of aggravation for the mental suffering and anguish the claimant must have felt because of the degrading conditions; and a sum of \$60,000.00 as exemplary damages.
- ***Ambrose v AG of Trinidad and Tobago (unreported)***<sup>10</sup> where the court awarded \$60,000 for compensatory damages for a period of 68 hours and \$10,000 for aggravated damages in July 2010.
- ***Clement v AG of Trinidad and Tobago***<sup>11</sup> where in July 2009 Gobin J awarded \$50,000.00 including an award for aggravated damages for a period of 17 hours.
- ***Harricharan v AG of Trinidad and Tobago***<sup>12</sup> where in December 2006 damages, including aggravated damages, were awarded as follows: False Imprisonment - \$50,000.00; Malicious Prosecution - \$75,000.00. The plaintiff, who was charged with the offence of larceny of a motor car, was in custody for approximately 9-10 hours.
- ***Alexis v AG of Trinidad and Tobago***<sup>13</sup> where in March 2008, the court awarded \$100,000.00 as general damages for unlawful arrest, false imprisonment and malicious prosecution, inclusive of aggravated damages to a claimant, who had evidence planted on him by the police and was imprisoned for 2 ½ months; and the sum of \$25,000.00 as exemplary damages to mark the court's disapproval of the conduct of the police officer.
- ***Watson v AG of Trinidad and Tobago***<sup>14</sup> where in July 2008 the court awarded \$35,000.00 together with interest as general damages for 1 day's imprisonment, malicious prosecution including an element of aggravated damages; and \$12,500.00 in exemplary damages. The claimant was charged with the offences of housebreaking and larceny and possession of marijuana for the purpose of trafficking.

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<sup>9</sup> *Seemungal v AG of Trinidad and Tobago, Rougier* HCA 894/2009

<sup>10</sup> *Ambrose v AG of Trinidad and Tobago* CA 114 of 2007 (unreported)

<sup>11</sup> *Clement v AG of Trinidad and Tobago* HCA No. 2218/2008

<sup>12</sup> *Harricharan v AG of Trinidad and Tobago* HCA 137/2006

<sup>13</sup> *Alexis v AG of Trinidad and Tobago* CV 2007-01747

<sup>14</sup> *Watson v AG of Trinidad and Tobago* CV 2006-01668

24. The defendant's attorney has referred the court to the following cases:

- ***McKenna v Estate Constable Grant and AG of Trinidad and Tobago***<sup>15</sup> where the claimant was incarcerated for 3 days before being granted bail and in 2008, he was awarded the sum of \$40,000.00 in general damages for false imprisonment, malicious prosecution and aggravated damages.
- ***Koon Koon v The AG of Trinidad and Tobago***<sup>16</sup> where a claimant who was incarcerated for 2 days was awarded on 4<sup>th</sup> July 2010 the sum of \$35,000.00 inclusive of aggravating damages.
- ***Henry v The AG of Trinidad and Tobago***<sup>17</sup> where the court, in June 2011, awarded \$35,000.00 in damages for false imprisonment for a period of 34.5 hours.

In light of the above, the defendant suggested that the claimant should receive the sum of \$40,000.00 for false imprisonment and malicious prosecution.

25. I accept the evidence of the claimant that he was not informed of the charge at the time of his arrest. The contention between the parties is the length of this imprisonment. This point plays a key role in the amount of damages to be awarded as the length of the unlawful imprisonment is a significant factor in assessing damages for wrongful imprisonment. (See ***Millette v Sherman Mc Nicholls***<sup>18</sup>). The claimant stated that he was imprisoned for 66 hours, from 11<sup>th</sup> December 2006 to 14<sup>th</sup> December 2006. The defendant submits that the court can only be certain on the number of days the claimant was detained upon the claimant's verification of same since such facts are only within his knowledge. Under cross-examination, the claimant was asked whether he was detained from about 7:00pm on the 11<sup>th</sup> to about 3:00pm on the 13<sup>th</sup>, to which he answered in the affirmative. To my mind, the claimant's explanation in his submissions as to the calculation of the 66 hours is sensible and reasonable. I, therefore, accept that the claimant was detained for a total of 66 hours and is entitled to compensation for that period.

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<sup>15</sup> *Mc Kenna v EC Leslie Grant #1662 and The AG of T&T* CV2006-03114, formerly HCA T51 of 2004.

<sup>16</sup> *Koon Koon v The AG of Trinidad and Tobago* CV 2007-02192

<sup>17</sup> *Henry v AG of Trinidad and Tobago* CV 2007-03897

<sup>18</sup> *Millette v Sherman Mc Nicholls* CA Civ No 14 of 2000

26. To determine an appropriate award, I took into account both the period of detention and the circumstances of his incarceration. I accept the claimant's evidence that the police officer grabbed him by his elbows and dragged him out of his house and downstairs towards the road, while his wife, mother and children were in the driveway. I also accept that the neighbours in nearby houses came out and were watching as this occurred.
27. Further, the claimant's evidence is that he was made to strip and was placed in a prison cell in only his underwear; had to resort to using a hole in the ground as a toilet on a few occasions which led to some form of depression; had to sit and sleep on the floor as there was no bed in the cell; was not allowed to bathe; felt claustrophobic; and was heckled and laughed at by other prisoners, and even police officers. I further accept the evidence as to the deplorable condition of the cell in which the claimant was placed. It is, therefore, reasonable to accept that the claimant experienced shame and humiliation as a result of this ordeal.
28. To my mind, the following cases were also worth considering in the present matter:
- ***Hyndman v AG of Trinidad and Tobago and SRP Constable Dave Chambers***<sup>19</sup> where Tam J in July 2001 awarded \$85,000.00 as general damages for assault, false imprisonment for 20 days and malicious prosecution, inclusive of aggravated damages and a further sum of \$25,000.00 for exemplary damages to a plaintiff who was arrested and charged for possession of a dangerous drug i.e. cannabis sativa.
  - ***Barcoo v AG***<sup>20</sup> delivered on 19<sup>th</sup> December 2001 by Mendonca J (as he then was) who awarded \$75,000.00 as compensatory damages including aggravated damages for false imprisonment for approximately five days and malicious prosecution. In making the award, the court took into account: the abuse and threats the plaintiff endured during the detention; the circumstances surrounding his detention; the condition of the cell in which he was detained; the obvious trauma and mental anguish he would have suffered throughout his imprisonment and prosecution; and the fact that the defendant sought to the end to justify an arrest and prosecution that were clearly unjustifiable. He also made an award of \$10,000.00 as exemplary damages. In this case no allegation of assault was made.

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<sup>19</sup> *Hyndman v AG of Trinidad and Tobago and SRP Constable Dave Chambers* HCA T-71 of 1996

<sup>20</sup> *Barcoo v AG* HCA 1388/1989

- ***Gabriel v AG of Trinidad and Tobago***<sup>21</sup> where the claimant spent 84 days in prison and was awarded \$125,000 for general damages which included an element for aggravation, and the sum of \$50,000.00 by way of exemplary damages.
- ***Henry v The Attorney General***<sup>22</sup> where on the 29th June 2011, the court awarded \$35,000 as damages, inclusive of aggravated damages, for detention for 34 ½ hours.

29. I also noted the 1998 guidance of Lord Woolf MR in ***Thompson v Commissioner of Police of Metropolis***<sup>23</sup> on the quantum of compensatory damages for wrongful arrest and false imprisonment to wit that:

*In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the Plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the Plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guidance we consider, for example, that a Plaintiff who has been wrongly kept in custody for 24 hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale.*

30. The guidance of Lord Woolf MR must be read in conjunction with the qualification issued in ***Clem Lewis v Trinidad and Tobago Electricity Commission***<sup>24</sup> by Stollmeyer J (as he then was) who in recognizing that the English figures cannot be transposed into our society commented thus, “[F]irst, the social, economic and industrial conditions in England cannot be equated to those in this country. Second, to convert an award made in England to Trinidad and Tobago dollars based solely on the rate of exchange applicable at the time cannot be correct: the purchasing power of £1.00 in England cannot be assumed to have the same purchasing power as TT\$8.90 in this country.”

31. Based on the claimant’s evidence, I consider that the award of damages to the claimant for false imprisonment and malicious prosecution should include aggravated damages, having regard to:

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<sup>21</sup> *Gabriel v AG of Trinidad and Tobago* HCA S1452 of 2003

<sup>22</sup> *Henry v The Attorney General* CV 2007-03897

<sup>23</sup> *Thompson v Commissioner of Police of Metropolis* [1998] QB 498, page 515

<sup>24</sup> *Clem Lewis v Trinidad and Tobago Electricity Commission* HCA S-587/1994

- (a) the humiliation and embarrassment which he suffered in front of his mother, wife and children as well as the neighbours on the day of his arrest. In this regard, I am not persuaded by the arguments of counsel for the defendant that the absence of any evidence from the claimant's neighbours should cause the court to disbelieve the claimant's evidence that he had suffered humiliation and embarrassment when he was taken to the police vehicle;
- (b) the conditions in the cell which he was obliged to endure between the time of his arrest and the time of being charged; and
- (c) the fact that despite the lack of evidence the police persisted in proffering the charges and depriving the claimant of his liberty.

32. Bearing this in mind, I am minded to award the claimant the sum of \$60,000.00 as general damages for false imprisonment and malicious prosecution, inclusive of aggravation, which I consider to be just and reasonable in all the circumstances of this case.

- **Assault and battery**

33. In the case of *Sedley Skinner v The Attorney General of Trinidad and Tobago*<sup>25</sup> Pemberton J explained that an assault refers to, “*the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact*”. She defined battery as, “*.. the application of force to another resulting in harmful or offensive contact*”. Thus, battery is an act by which a person intentionally or recklessly applies unlawful force to the complainant. The claimant gave evidence that while at the police station, one of the officers slapped him and hit him on the head with a big book. This established the claimant's case for assault and battery and his evidence, under cross-examination, was unshaken. Further, it is accepted that there was no permanent residual injury from the battery and the claimant opted not to seek medical attention.

34. To determine an appropriate award, I considered the case of *Kerry Waldron v The AG*<sup>26</sup> where the claimant, who was struck twice on his head and on both ears with a charge book and was also kicked, was awarded \$7,000.00 on 23<sup>rd</sup> March, 2010 by Gobin J. I also had regard to

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<sup>25</sup> *Sedley Skinner v The Attorney General of Trinidad and Tobago* CV 2006-3721 @ paragraphs 25 and 26

<sup>26</sup> *Kerry Waldron v The AG* CV2006-02222

the case of *Winston Mc Laren v Daniel Dicky, Ryan Saunders, Leslie Keen and ors*<sup>27</sup> where the 3<sup>rd</sup> defendant was awarded \$2,500.00 by Rajnauth-Lee J on 5<sup>th</sup> June, 2009 after being struck by the claimant with a metal pipe and suffering a contusion to her right hip.

35. I found, however, that the case of *Ramashwar Baldeosingh Mohammed & ors v AG*<sup>28</sup>, referred to by counsel for the defendant, to be particularly helpful in the determination of the award to be made in the instant matter. In *Ramashwar Baldeosingh Mohammed case*, the claimant was dragged from the police jeep, struck on the head twice with a large book and slammed against a concrete wall before being picked up by an officer and kicked in the genitals, whereupon he fell to the floor. The court awarded him \$12,000.00 in damages for assault and battery, taking into account that the injuries to the throat and scrotum would have been painful and lasted for some time given that these were particularly sensitive areas as well as the fact that he was handcuffed and unable to defend himself; was verbally abused and did nothing to prove the attack.

36. In the circumstances, counsel's distinctions between the cases quoted and the present facts are also noted. In the light of this, I am of the view that a reasonable award of damages for the assault and battery would be \$7,500.00.

- **Detinue and conversion**

37. It is to be noted that the claimant may recover general damages for loss of use of the goods although he would not have used them during the period within which he has been deprived of their use: *The Mediana*<sup>29</sup>. This action lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in possession of the goods and who on proper demand, fails or refuses to deliver them up without lawful excuse. (See dictum of Donaldson J in *Alicia Hosiery v Brown Shipley and Co Ltd.*<sup>30</sup>)

38. To constitute conversion, there must be a positive wrongful dealing with the goods in a manner inconsistent with the owner's rights and an intention in so doing to deny the owner's rights or

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<sup>27</sup> *Winston Mc Laren v Daniel Dicky, Ryan Saunders, Leslie Keen and ors* CV2006-01161

<sup>28</sup> *Ramashwar Baldeosingh Mohammed & ors v AG* CV 2006-02222

<sup>29</sup> *The Mediana* (1900) AC 113, 117-8 per Earl of Halsbury LC

<sup>30</sup> *Alicia Hosiery v Brown Shipley and Co Ltd* [1969] 2 AER 504 at 510

to assert a right inconsistent with them. There need not be any intention to challenge the true owner's rights. A demand and refusal are sufficient evidence of conversion.

39. The principle enunciated in *Livingstone v Rawyards Coal Co*<sup>31</sup> states that damages for conversion and detinue should be flexible and restorative in nature. It should as far as money can do put the claimant in his pre injury position. Lord Blackburn thought it improper to simply assess the value of a converted chattel at the date of conversion without due consideration for the surrounding circumstances and the nature of the defendant's conduct. Thus, the measure of damages "*must be qualified by a great many things which may arise - such, for instance, as by the consideration whether the damage has been maliciously done, or whether it has been done with full knowledge that the person doing it was doing wrong.*"

40. It is important also to note the comments of the Court of Appeal in *Rosenthal v Alderton & Sons Limited*<sup>32</sup> that, "*in an action of detinue the value of the goods claimed but not returned ought, in our judgment, to be assessed as at the date of the judgment.*" Thus, a claimant who sues in detinue is entitled to claim, in the absence of a return of the property, the market price at the time of the judgment; with the risk of any rise in market price between the detention and judgment falling to the defendant. See Mc Gregor on Damages.<sup>33</sup>

41. In *Gerald Mootoo v The AG*<sup>34</sup> Stollmeyer J (as he then was) explained the distinction between conversion and detinue thus:

*Conversion is a purely personal action for pecuniary damages resulting in judgment for a single sum, generally measured by the value of the chattel at the date of judgment together with any consequential damage flowing from the conversion which is not too remote.*

*Where conversion cannot be directly proved, it may be inferred from proof of a demand for the item and the refusal to hand it over.*

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<sup>31</sup> *Livingstone v Rawyards Coal Co* [1880] 5 App Cas 25

<sup>32</sup> *Rosenthal v Alderton & Sons Limited* [1946] 1 KB 374 @ 377

<sup>33</sup> Mc Gregor on Damages 13<sup>th</sup> edition paragraph 218

<sup>34</sup> *Gerald Mootoo v The AG* HCA 431 of 1997

*Detinue is more in the nature of an action in rem because the Plaintiff seeks the return of the item or payment of its value assessed at the date of judgment, together with damages for its detention. This effectively gives a defendant a choice of whether to return or pay for the item.*

*It is immaterial whether a defendant obtained the item by lawful means because the injurious act is the wrongful detention, not the original taking or obtaining of possession. Detinue is usually evidenced by a failure to deliver an item when demanded.*

*Damages for detinue are intended to compensate a plaintiff for his loss, not to punish a defendant. Consequently, the fall in value of an item subsequently recovered can be recovered only if the loss is proved. Otherwise, only nominal damages are recoverable.*

42. To be noted, however, is that in the award of damages, one must be careful not to duplicate awards. Having given compensation for the loss of the water pump under special damages, no award is made under this head of general damages.

- **Exemplary damages**

43. As noted in ***Rookes v Barnard***<sup>35</sup>, exemplary damages are awarded where the offender's behaviour amounted to oppressive, arbitrary and unconstitutional action. The case of ***Kuddus v Chief Constable of Lecestershire***<sup>36</sup> established that the court will usually make an award of exemplary damages where:

- (a) The awards for compensatory damages are perceived as inadequate to achieve a just result between the parties.
- (b) The nature of the defendant's conduct calls for a further response for the courts.
- (c) The conscious wrongdoings by a defendant is so outrageous that something more is needed to show that the law will not tolerate such behaviour.
- (d) Without an award of exemplary damages justice will not be done otherwise.
- (e) It is usually a last resort to fill a "regrettable lacuna".

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<sup>35</sup> *Rookes v Barnard* (1964) AC 1129

<sup>36</sup> *Kuddus v Chief Constable of Lecestershire* (2002) AC 122 at para 63

44. In the case of **Lennox Quashie supra** Hosein J noted, “[T]he circumstances of the assault, false imprisonment and malicious prosecution should not be viewed lightly and in my view would attract an award for aggravated damages. The claim for aggravated damages is founded on the basis that the circumstances surrounding the assault, false imprisonment and malicious prosecution of the plaintiff amounted to oppressive, arbitrary and unconstitutional action by servants of the State... Constitutional rights are not incidents of levity and their infringement by officers of the State is and would always remain a matter of seriousness and concern. In this respect the plaintiff is entitled to exemplary damages for breach of his constitutional right not to be deprived of his liberty without due process.” Hosein J found \$9,500.00 to be an appropriate amount in respect of exemplary damages.

45. To my mind, the behaviour of the servants or agents of the defendant must not be condoned. As emphasized by Tam J in **Felix Hyndman**, “A person’s liberty is sacred. To be deprived of it through the wrongful actions of one who has sworn to protect and serve the community, compounded by the bringing of a false criminal charge is wholly unacceptable and must not be tolerated under any circumstances.” In the case of **Ricardo Watson supra** exemplary damages to the toll of \$12,500.00 was awarded. As much as I recognize the need for moderation in making awards of exemplary damages and the need to take account of the awards that I have already made by way of compensation, which included an element of aggravated damages, I still must emphasize my condemnation of the highhanded actions of the police officers and act to deter the officers concerned and others from repeating such conduct. With these considerations in mind, I consider an award of \$5,000 to be sufficient to register this court’s condemnation of the conduct of the relevant officers.

#### IV. INTEREST

46. The award of interest on damages is discretionary pursuant to **section 25 of the Supreme Court of Judicature Act Chap 4:01**. The basis of this award is that a claimant has been kept out of his money by a defendant who has had the use of it himself so ought to compensate the claimant for this. See **Jefford v Gee**<sup>37</sup>. In arriving at an appropriate interest rate, I have considered the effects of the global economic downturns on short term investments as well as the **Monthly Statistical Digest** compiled by the Central Bank of Trinidad and Tobago as provided by counsel for the defendant.

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<sup>37</sup> *Jefford v Gee* [1970] 1 AER 1202

## **V. ORDER**

47. It is thus the order of this court that the defendant do pay to the claimant –

- (i) General damages for false imprisonment and malicious prosecution inclusive of an uplift for aggravated damages in sum of \$60,000.00; and for assault and battery in the sum of \$7,500.00, with interest on both sums at 7% from 25<sup>th</sup> August 2009 to 12<sup>th</sup> June 2012;
- (ii) Special damages in the sum of \$1,500.00 with interest at the rate of 5% from 11<sup>th</sup> December 2006 to 12<sup>th</sup> June 2012.
- (iii) Exemplary damages in the sum of \$5,000.00.
- (iv) Costs on the prescribed basis in the sum of \$12,917.10.

Dated 12<sup>th</sup> June, 2012

**Martha Alexander**

**Master (Ag)**

**Judicial Research Assistant: Ms Kimberly Romany**