

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2019-00818

BETWEEN

ANTHONY MORGAN

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Thursday 18th April 2024

Appearances:

Mr. Kevin Ratiram for the Claimant

Ms. Trisha Ramlogan instructed by Janine Joseph for the Defendant

ASSESSMENT OF DAMAGES, INTEREST & COSTS

INTRODUCTON AND PROCEDURAL HISTORY

[1] This is an assessment of damages for wrongful arrest and false imprisonment being carried out pursuant to the judgment and order of this Court handed down on 19th November 2020. A brief background of the proceedings up to the stage of the said judgment and order is set out hereunder.

[2] By Claim Form and Statement of Case filed on 25th February, 2019, the Claimant instituted proceedings against the Defendant for (1) damages for wrongful arrest; (2)

damages for false imprisonment; (3) aggravated and exemplary damages; (4) interest; and (5) costs. The Claimant alleged that around 11:00am on Friday 15th September, 2017, while at his home at No. 25 West Bayshore, Marabella, a group of police officers entered and subsequently arrested him. He, along with another man, was taken to the Marabella Police Station. He was detained until Thursday 21st September, 2017, when he was released without any charges being laid against him.

- [3] On 4th July, 2019, the Defendant made an application for an extension of time to file its Defence, which was granted. The Defendant again, applied for a further extension of time to file its Defence on or before 20th September, 2019. Following the Defendant's failure to file its Defence in the specified time, the Claimant applied for leave to enter Judgement in Default on 16th August, 2019. However, since the Defendant had already applied to the Court for an extension of time, which was granted, the Claimant's application became otiose.
- [4] The Defendant eventually filed its Defence on 20th September, 2019.
- [5] Thereafter, by Notice of Application filed on 25th November, 2019, the Claimant applied to strike out the Defendant's Defence on the ground that it disclosed no grounds for defending the Claim.
- [6] By a written judgment delivered on 19th November 2020, it was ordered by this Court that the Defendant's defence be struck out pursuant to **Part 26.2 (1) (c) of the Civil Proceedings Rules 1998 (CPR)** as the defence disclosed no grounds for bringing the defence. Additionally, summary judgement was granted in favour of the Claimant for damages to be assessed by this Court at a subsequent hearing,
- [7] In accordance with case management directions, Counsel on both sides filed and served their respective submissions on quantum. The Court has now made its assessment which is detailed hereunder.

ASSESSMENT OF DAMAGES

- [8] In assessing the award of damages, the quantum is left to the judge's discretion. The principal heads for false imprisonment are: injury to liberty, loss of time considered from a non-pecuniary viewpoint, injury to feelings, that is, the indignity, mental suffering, disgrace and humiliation along with any loss of social status. As stated by Lawrence LJ in **Walter v Alltools (1944) 61 TLR 39.40**, "*a false imprisonment does not merely affect a man's liberty; it also affects his reputation*"
- [9] In considering the award, the words of Mendonça JA, in **Attorney General of Trinidad and Tobago v Joel Roop Civil Appeal No. P182 of 2015** are also instructive:

"9. The principal heads of damage for false imprisonment arise from the deprivation of liberty, that is, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, that is, the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation. The award of general damages will contain no breakdown in relation to the various heads of damage. The claimant may also recover any pecuniary loss, damages for any physical injury and any injury to his reputation. (See McGregor on Damages, 20th edition (2018) paragraphs 42-013, 42-020, 42-022 and 42-023 and Calix v Attorney General of Trinidad and Tobago [2013] UKPC 15).

10. With respect to what the Court should consider in assessing damages for injury to reputation, the authors of Clayton and Tomlinson on Civil Actions against the Police, 3rd ed (2004), state at para 14-059: "...damages for loss of reputation should be considered. The quantum of this award should take into account the claimant's character and reputation, the amount of publicity his arrest and detention received and so on."

11. The award of damages may include an uplift for 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 features include humiliating circumstances at the time of arrest which show that those responsible for the arrest behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment (see Thompson v. Commissioner of Police of the Metropolis and HSU v Commissioner of Police of the Metropolis [1998] QB 498 CA).

- [10] In reviewing the facts of the case as presented by the Claimant in his Statement of Case and submissions, the Claimant contended that a group of officers entered his home and that two of the officers pushed him against a wall. Other officers pointed a gun at his head in front of his five (5) year old son, his wife and his one (1) month old baby.
- [11] The Claimant submitted that he was asked if he was ‘Morgan’ and when he responded in the affirmative, he was arrested and taken outside in full of view of his neighbours and placed in a hot police vehicle. He stated that he felt embarrassed. After an hour another person was also placed in the vehicle with him. They were taken to the Marabella Police Station, where he was placed in a hot cell with four other persons. He described the cell as being filthy with a hole in the ground for a toilet which smelt of human waste.
- [12] The Claimant was not allowed to speak with his attorney when the attorney attended the police station. The Claimant submitted that he hardly got much sleep as he had to sleep on the floor of the cell. On September 18, 2017, he was taken out of the cell and interviewed by Sgt Simmons. When the interview was completed, he was returned to the cell.
- [13] On Tuesday 19th September, 2017, the Claimant was taken out of his cell and taken to the San Fernando Police Station. He was again placed in a cell with four persons. In this cell, there was also nothing to sleep on and there was also a hole in the ground for a toilet. He was taken out of the cell and interviewed by two officers of mixed descent on Wednesday 20th September, 2017. After the interview he was returned to his cell. He was released without charge on Thursday 21st September, 2017.

[14] The Claimant described the experience as traumatic as he was away from his family and that he knew he did nothing wrong.

[15] From the facts of this case, the Claimant suffered loss of liberty, injury to his feelings, physical injury, that is, the discomfort resulting from the detention and loss of injury to his reputation. He would have been away from his home for a total of six (6) days and 11 hours. Based on his evidence he was only told of the reason for his arrest during the interview, not when he was arrested.

[16] Counsel for the Claimant submitted that **\$200,000.00** was a suitable award for general damages inclusive of aggravated damages. Counsel relied on the following authorities to support his proposal:

- i. **Anand Dass v The Attorney General of Trinidad and Tobago CV2018-01739**: where the Claimant was awarded **\$75,000.00** in general damages for 3 days and 3 hours for wrongful arrest and false imprisonment.
- ii. **Leah Mitchell-Samuel v The Attorney General of Trinidad and Tobago CV2017-03717**: where the Claimant was awarded **\$130,000.00** in general damages for wrongful arrest and false imprisonment for 2 days.
- iii. **Emraan Ali v The Attorney General of Trinidad and Tobago CV2012-02695**: a case where the Claimant was awarded **\$45,000.00** in general damages for false imprisonment for 24 hours.
- iv. **Wayne Clement v The Attorney General of Trinidad and Tobago CV2008-02218**: a case where the Court ordered that the Claimant be awarded **\$50,000.00** in general damages for false imprisonment.
- v. **Indra Samuel v PC Ali and Anor CV2014-00608**: the Claimant in this case was awarded **\$45,000.00** in general damages for false imprisonment for 27 hours.

- vi. **Ricardo Jack v The Attorney General of Trinidad and Tobago CV2014-02841**: the Claimant was awarded **\$50,000.00** in general damages for 24 hours of false imprisonment.

- vii. **The Attorney General of Trinidad and Tobago v Kevin Stuart Civ App P162 of 2015**: the Respondent was falsely imprisoned for 33 hours and was awarded **\$50,000.00** in general damages.

[17] Counsel for the Defendant submitted the following cases for the Court's consideration:

- i. **CV2016-03185 Dipnarine Samnarine v The Attorney General of Trinidad and Tobago**: a case where the Claimant was unlawfully detained for 7 days and awarded **\$110,000.00** in general damages inclusive of aggravated damages.

- ii. **CV2017-02395 Kyle Nero v The Attorney General of Trinidad and Tobago**: it was held in this case that the Claimant should be awarded **\$75,000.00** in general damages inclusive of an uplift for aggravated damages with interest at a rate of 2.5%. He was also awarded \$15,000.00 for exemplary damages.

- iii. **CV2014-03967 Ricardo Luke Fraser v The Attorney General of Trinidad and Tobago**: in this case the Claimant was unlawfully detained for 5 days and was awarded **\$100,000.00** in general damages inclusive of aggravated damages.

- iv. **CV2010-00108 Charlton Dover v The Attorney General of Trinidad and Tobago**: it was held in this case that the Claimant be awarded **\$60,000.00** in general damages and **\$20,000.00** for aggravated damages for 4 days false imprisonment.

[18] Defence Counsel is of the view that an award of **\$95,000.00 to \$110,000.00** would be suitable should the Claimant be awarded general damages, aggravated damages and exemplary damages.

[19] In arriving at its determination, the Court also considered the following cases:

- i. **Harold Barcoo v The Attorney General of Trinidad and Tobago and Inspector Phillip Browne H.C. 1388 of 1989** where Mendonça J (as he then was) awarded the Claimant **\$75,000.00** inclusive of aggravated damages for false imprisonment for 5 days and malicious prosecution as well as **\$10,000.00** for exemplary damages. He was also awarded special damages for legal expenses in the sum of **\$9,500.00** and loss of salary and meal allowance in the sum of **\$37,665.00**.
- ii. **Atain Takitota v The Attorney General of The Commonwealth of The Bahamas and Others [2009] UKPC 11** where the Privy Council pointed out that in a case of unlawful detention, a court may increase the award to a higher figure than it would have given simply for the deprivation of liberty, to reflect such matters as the indignity and humiliation arising from the circumstances of arrest or the conditions in which the Claimant was held.
- iii. **Stephen Seemungal v Attorney General and John Rougier Commissioner of Prisons CV2009-00894**: In 2010, the Claimant was awarded **\$100,000.00** in general damages (including aggravated damages) on a claim for wrongful imprisonment after being imprisoned for a period of 12 days. He was also awarded **\$60,000.00** in exemplary damages.
- iv. **Rajesh Gokool v The Attorney General of Trinidad and Tobago CV2020-02403**: in this case the Claimant was awarded **\$100,000.00** in general damages for false imprisonment for a period of 5 days. The Defendant was ordered to pay the Claimant interest at the rate of 2.5% per annum from the date of the filing of the claim to the date of judgment. It was also ordered that the Claimant be paid 60% of his prescribed costs on the Assessment of Damages in accordance with Appendix C of Part 67 of the CPR.

AGGRAVATED DAMAGES

[20] Aggravated damages are awarded for any mental distress or injury to feelings caused by the false imprisonment. As stated by de la Bastide C.J. in **Thaddeus Bernard v Quashie CA No 159 of 1992**:

“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages, that is, damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received. Under this head of what I have called ‘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. If the practice has developed of making a separate award of aggravated damages I think that practice should be discontinued.”

- [21] Having considered the evidence of the Claimant that (i) he was arrested in front of his family and neighbours with guns pointed at his head; (ii) he was placed in a hot police vehicle for about an hour before being taken to the Marabella Police Station; (iii) at the Police Station he was placed in a small, over-crowded, filthy cell with a hole in the ground for a toilet which smelt of human waste; (iv) the cell had nowhere for him to sleep so he was forced to sleep on the ground and hardly slept at all; and (v) he was also taken to the San Fernando Police Station the next day where he was exposed to similar conditions of a cell in which he was kept until his release. He contended that all of these circumstances were embarrassing and traumatic to him.
- [22] Taking into account the injury to his feelings and loss of his liberty for 6 days, and considering all of the authorities cited earlier by counsel for both parties, this Court is of the view that this case is more in line with the case of **Rajesh Gokool v The Attorney General of Trinidad and Tobago CV2020-02403** (supra). Since in the case at bar the Claimant lost his liberty for one more day than in **Rajesh Gokool**, the award should be a little higher. I find therefore that the Claimant is entitled to an award of **\$130,000.00** for general damages inclusive of an uplift for aggravated damages, which appears fair and just in all the circumstances for the wrongful arrest and false imprisonment he suffered.

EXEMPLARY DAMAGES

[23] In **Rookes v Barnard [1964] AC 1119 at 1226**, Lord Devlin stated that exemplary damages are different from ordinary damages and will usually be applied:

- (a) Where there is oppressive, arbitrary or unconstitutional conduct by servants of government;
- (b) Where the Defendant's conduct had been calculated to make a profit; and
- (b) Where it was statutorily authorised.

[24] In **Caleb Torreys v The Attorney General of Trinidad and Tobago CV2017-00142** this Court stated thus:

“[77] Police officers acting in the course of their employment are for the purposes of an award of exemplary damages the servants of the government. Exemplary damages, unlike aggravated damages which are compensatory in nature, are intended to be punitive, to punish or deter a tortfeasor. Such an award is appropriate where the police behave in an oppressive, arbitrary or unconstitutional manner, and where the court having regard to the award for compensation (inclusive of aggravated damages) is of the view that it is not sufficient to mark the court's disapproval of the actions of the agents of the state (the police).”

[25] Based on the evidence submitted and in consideration of the cases above, this Court is of the view that an award of exemplary damages is not warranted as the Court is of the firm view that the award granted for general damages inclusive of an uplift for aggravated damages is sufficient to mark the court's disapproval of the actions of the police.

INTEREST

[26] The Claimant has claimed interest on general damages at a rate of 2.5% per annum. The Defendant is also of the view that an interest rate of 2.5% per annum is appropriate. This Court is in agreement that interest should be awarded on general damages at a rate of **2.5% per annum** in keeping with the decision of the Court of Appeal in **The Attorney General of Trinidad and Tobago v Fitzroy Brown et al No. CA 251 of 2012** from the date of the filing

of the Claim form, i.e. 25th February, 2019 to the date of this judgment/assessment, i.e. 18th April 2024. Pre-judgment interest will therefore be calculated by the following formula: $\$130,000 \times 2.5\% \times 1880 \text{ days} \div 365$ = $\$16,740.00$. Post-judgment interest will be calculated at 5% per annum statutory rate of interest in accordance with section 25A (2) of the Supreme Court of Judicature Act Chap. 4:01 and section 13 (1) of the Remedies of Creditors Act Chap. 8:09.

COSTS: Entitlement and Quantification

[27] The general rule is that the Court must order the unsuccessful party to pay the costs of the successful party (costs follow the event rule): CPR Rule 66.6(1). On the basis that the Defendant's Defence was struck out and as the Claimant was granted summary judgment with costs to be assessed on the Notice of Application to strike out, the Claimant will be entitled to 60% of the prescribed costs in accordance with Appendix C of CPR Part 67. Costs of the Notice of Application to strike out filed on 25th November 2019 are to be assessed in accordance with CPR Rule 67.11, in default of agreement as ordered on 19th November 2020.

[28] In determining prescribed costs, the "value" of the Claim must be ascertained in accordance with CPR Rule 67.5 (2) (a) which must also include pre-judgment interest as established by the Privy Council decision in Benoit Leriche v Francis Maurice [2008] UKPC 8. Accordingly, the value of the Claim will be calculated as follows: $\$130,000.00 + \$16,740.00 = \$146,740.00$. Full prescribed costs calculated in accordance with the Scale of Prescribed Costs in Appendix B of CPR Part 67 amount to $\$31,011.00$. However, as stated earlier in paragraph [27] above, the Claimant is only entitled to 60% of the full prescribed costs which is quantified in the sum of $\$18,606.60$.

DISPOSITION

[29] In light of the foregoing analyses and findings, the order of the Court is as follows:

ORDER:

1. The Claimant is awarded general damages in the sum of \$130,000.00 for wrongful arrest and false imprisonment with an uplift in the award for aggravated damages.
2. Pre-judgment interest on general damages is awarded at the rate of 2.5% per annum from the date of the filing of the Claim (25th February 2019) to the date of this judgment/assessment (18th April 2024) calculated in the sum of \$16,740.00.
3. The Defendant shall also pay to the Claimant 60% of his prescribed costs on the Claim up to assessment of damages quantified in the sum of \$18,806.60 accordance with CPR Rule 67.5 (2) (a) and Appendices B and C of Part 67 of the CPR 1998.
4. The Claimant is also entitled to recover costs of the Notice of Application to strike out filed 25th November 2019 to be assessed pursuant to CPR Rule 67.11, in default of agreement, as ordered in the judgment delivered on 19th November 2020.

Robin N Mohammed
Judge

Post Script: Upon delivery of the above judgment and order, submissions were made by both counsel, Mr Ratiram and Ms Ramlogan, on the question of assessed costs of the Notice of Application to strike out the Defendant's Defence filed 25th November 2019, whereupon the Court assessed costs of the said application in the sum of \$7,500.00.

It is therefore further ordered that the Defendant shall pay to the Claimant costs of the Notice of Application to strike out assessed in the sum of \$7,500.00.

Robin N Mohammed
Judge