

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. C.V. 2010-04096

Between

SHAHLEEM SHAZIM MOHAMMED

Claimant

And

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances:

1. Mr. Gerald Ramdeen instructing Mr. Varun Debideen for the Claimant
2. Ms. Leah Thompson and Ms. Nicole –Anna Jones for the Defendant

Edited transcript of the oral decision delivered on 6th May, 2014

REASONS

1. Before the Court for its determination, is the Claimant's claim for damages for assault and battery and all consequential losses suffered by Claimant as a result of the alleged actions of the servants and/or agents of the Defendant, who while acting in the course of their duty as servants or agents of the State, it is alleged, assaulted and beat the Claimant on or about the 5th July, 2010 at the State Prison Golden Grove, Arouca. The Claimant also sought damages for aggravated, exemplary and/or vindictory damages, cost and interest.
2. A defence was filed on behalf of the State and witness statements were filed by all parties. The Claimant filed one witness statement and the Defendant filed two witness statements, one on behalf of Prison Officer Imran Khan who was the officer with whom the alleged incident occurred and another witness statement on behalf of Mr. Joseph Seyjagat, now retired Prison Officer, who at the material time was the Acting Prison Supervisor at the Remand Prison in Golden Grove, Arouca.
3. Essentially the Court had to determine an issue of fact in this matter as to whether or not unreasonable and unjustified force was used upon the Claimant at the material time.
4. The Defendant's case was that the Claimant was not complying with directions of Prison Officer Khan to return to his assigned cell and as a result of his non compliance the officer took the Claimant's arm with the intention of escorting him and the Claimant struck him across the forehead causing his beret to fall off his head and being fearful in that circumstance the prison officer, said that he struck the Claimant one blow to his face using his regulation staff.
5. Having considered the evidence, the witness statements filed on the behalf of all the parties and having regard to the cross examination, the Court makes the following findings of fact:
6. The Claimant's injuries are not consistent with the use of force and the manner in which that force was inflicted as described by Prison Officer Imran Khan. The accident report

which formed part of the consent documents before this Court revealed injuries that are far more extensive and are not restricted to the face of the Claimant. The accident report reveals inter alia that there was swelling to the neck as well as an injury to one of the Claimant's knees. Nothing in the Prison Officer's account of the events at the material time explained how the prisoner could have occasioned those injuries that are reflected on the accident report. This Court rejected the evidence of the Mr. Imran Khan as it relates to the events that transpired on the day in question. The Court found as a fact that more than one blow was inflicted upon the Claimant and that on a balance of probabilities the version of events as described by the Claimant was more probable and plausible, in the circumstances.

7. The Court however found that there was some exaggeration by the Claimant as to the continuing effects of his injuries. In his witness statement he said that he experiences headaches on a continuous basis. The Court noted however that there is absolutely no documentation before it that suggests that the Claimant has been taken to the infirmary subsequent to the incident or that on repeated occasions he has received treatment for continued headaches.
8. The Court also noted that in the course of the management of this matter no application was made by the Claimant for any independent medical examination so as to ascertain or determine whether he has any permanent and long standing condition as it relates to any head injury that could manifest itself in continued headaches. In civil matters the Claimant has an obligation to discharge the burden of proof and to adduce the requisite evidence in support of the claims made by him. Although the Court found that the Claimant exaggerated and reject his evidence of the continued effects of the assault that was occasioned upon him, the Court formed the view that, that aspect of his evidence did not impact on his credibility insofar as it related to the events leading up to and during the assault in relation to the events that occurred on the material day. Accordingly the Court holds that the Claimant is entitled to receive damages as a result of the assault and battery that was occasioned upon him on the material day.

9. The question therefore to be determined is what the appropriate quantum of damages for the injuries sustained as well as consideration of whether or not exemplary, aggravated and/or vindictory damages should be paid by the Defendant to the Claimant.

10. In determining the appropriate quantum of damages that ought to be paid to the Claimant the Court had regard to the principles as set out in **Cornilliac .v. St. Louis (1965) 7 W.I.R 491**, the Court also addressed its mind to decisions of **Owen Goring .v. The Attorney General of Trinidad and Tobago CV 2010-03643** and **Alphie Subiah .v. The Attorney General of Trinidad and Tobago PC Appeal No. 39 of 2007**. The Court found that the factual matrix in this case can be distinguished from the factual matrix that operated in the case of **Goring**, the nature of the act is not as severe nor are the injuries sustained by the Claimant in the view of this Court, as severe as the injuries that Mr. Justice Rajkumar addressed his mind to in the **Goring** case.

11. The Court also looked at the decisions of **Martin Reid .v. The Attorney General of Trinidad and Tobago CV 2006-02496** and **Lester Pitman .v. The Attorney General of Trinidad and Tobago CV2009-00638** and is of the view that in the circumstances of this particular case that an appropriate award as it relates to general damages is the sum of \$25,000.00. Whenever a citizen, whether incarcerated or not, is subjected to an attack by a functionary of the State in the manner in which the Claimant was attacked, the issue of aggravated and exemplary damages must be addressed. In this case the Court thinks that it is not only appropriate for such an award to be made but that the award should be in a quantum of \$45,000.00. Guided by the various judicial decisions, the Court notes that the nature and the extent of this attack was not particularly brutal or extensive.

12. Accordingly the Court's decision is that Defendant is to pay to Claimant the sum of \$25,000.00 on an account of general damages and \$45,000.00 in relation to an award for aggravated and exemplary damages. The Defendant is also to pay to the Claimant's costs which is to be calculated on a prescribed cost basis.

13. Having ruled in the manner that the Court has, the Court feels that it is incumbent upon it to make certain pronouncements as it relates to this issue of the assault and battery on persons who are incarcerated. The question of the physical conditions of prisoners held at the prisons and the issue of the assault of persons who are incarcerated have been the subject of much discussion both by Judges and members of the public in the recent past. More particularly within recent months the issue of the abuse of prisoners has found itself at the forefront of national discussion. It is undeniable and this judgment affirms the position that persons who are incarcerated have and continue to be subjected to assaults and beatings that are unjustified. Such a position is unacceptable and the State ought never to be allowed to shield itself from liability by virtue of the fact that persons who are incarcerated, do not have the easy and adequate access to legal representation. However, when such instances occur and persons are able to make contact with Attorneys at Law there must an obligation on their legal representatives to ensure that the matter is litigated in accordance with the regulations as outlined under the Legal Profession Act. Once there is compliance with the obligations as outlined under the Legal Professional Act then no criticism ought to be afforded to any attorney who takes it upon himself or herself to assist a citizen who has been subjected to unjustified and unacceptable behavior by functionaries of the state.

14. The situation that occurred in this matter and in many other matters that have been adjudicated by the Court as it relates to the abuse of persons who are incarcerated must not and cannot be allowed to continue. There is an urgent need for a revisiting of not only physical conditions that operate at the prisons but there is a dire need for the proper training and equipment of persons who are charged with the responsibility of dealing with prisoners on a daily basis. The State has an obligation to ensure that persons who are employed with the protective services are psychologically and emotionally suited and equipped to discharge the sometimes onerous responsibility that is placed upon their shoulders. There is a need for continued psychological assessment, support and adequate training for these servants of the State.

15. Several Judges have also pointed out the fact that there is a need for review and a revision of the prison rules. This is a call that is again reemphasized. It cannot be in 2014 we are

operating with rules pursuant to the West Indian Prisons Act of 1838. An adequate revision of rules may serve to guide Prison Officers as to the expectations placed upon them as well as the procedure that ought to be adopted when dealing with prisoners.

16. It is the hope of this Court that some of the issues that outlined as well as the myriad of comments by my brother and sister Judges would be taken into account and that steps be taken so as to ensure that the rights of all citizens whether incarcerated or not, are continuously upheld.

17. The Court therefore orders:

- a. The Defendant shall pay to the Claimant the sum of Twenty Five Thousand Dollars (\$25,000.00) on account of general damages and Forty Five Thousand Dollars (\$45,000.00) on account of aggravated and exemplary damages.
- b. The Defendant shall pay the Claimant's costs to be calculated on a prescribed costs basis.
- c. There shall be a stay of execution in respect to Claimant's damages and costs of twenty- eight (28) days.

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FRANK SEEPERSAD
JUDGE