

COMMONWEALTH OF DOMINICA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(Civil)

CLAIM NO DOMHCV2010/0030

BETWEEN:

DANNY AMBO

Claimant

AND

[1] MICHAEL LAUDAT
[2] THE ATTORNEY GENERAL OF DOMINICA

Defendants

Appearances:

Mrs Dawn Yearwood-Stewart for Claimant
Ms Sherma Dalrymple for the Defendants

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2011: February 8; October 17
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Introduction and background

- [1] **LANNS, M:** This is an assessment of damages in an action for false imprisonment and malicious prosecution on charges of murder and conspiracy to commit murder.
- [2] The claim arose after the murder charge against the Claimant was withdrawn on 18th July 2007, after **93 days and 5 hours** of incarceration from 19th April 2007 to 18th July 2007. The charge for conspiracy to commit murder was dismissed on 23rd July 2007 as the prosecution failed to offer evidence against the Claimant.
- [3] The issue of liability was determined on 26th March 2010 when default judgment was entered against the Defendants for their failure to contest the Claimant's statement of case. Directions on the assessment were given on 1st July 2010 and the assessment was fixed for hearing on 23rd September 2010.
- [4] On 23rd September 2010, the matter came on for assessment of damages before another Master. Instead of proceeding to the assessment of damages on the evidence and submissions that were before her, the Master made an order allowing the Claimant to file

supplemental submissions to plead a cause of action of false imprisonment when there was no application before the court. An appeal was filed against the Master's order and the Court of Appeal allowed the Appeal holding that:

- "1. At an assessment of damages hearing the court is not required to go behind the default judgment order and enquire into matters of liability because the defendant by failing to file an acknowledgement of service and/or a defence is taken to admit liability as pleaded. 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 general damages and any special damages claimed. Generally, the claimant would not be entitled to damages pleaded in the cause of action if not proven by evidence.
2. A claimant's failure to prove damages under a pleaded head of claim in the evidence adduced is not a matter which a court of its own initiative should put right by an order which gives the claimant a further opportunity to prove such damages. Regardless of whether or not a defendant is permitted to be heard on the issue of quantum, the court should critically carry out the assessment on the scheduled date on the evidence adduced, with the overriding objective of minimizing the costs of the assessment, ensuring that it is dealt with expeditiously, and that the judicial time and resources of the court are not disproportionately allotted in assessing the quantum of damages in the claim.
3. A defendant against whom a default judgment has been entered would not be prevented from appealing an interlocutory order made at an assessment hearing despite the provisions of 12.13."

Special damages

- [5] In his Statement of Claim, the Claimant claims special damages in the sum of Forty Thousand Dollars (EC\$40,000.00) for legal representation by the Law Firm of Dyer and Dyer, and \$140.00 for transportation to and from court. In paragraph 23 of his supporting affidavit, he deposed:

"I paid my lawyer Mrs Dyer and Dyer ... for legal representation the sum of \$40,000.00. I travelled from Woodfordhill to Roseau Magistrate's Court 7 days at \$20.00 per day amounting to \$140.00. I would like to be refunded my out of pocket expenses."

- [6] However, the Claimant failed to provide any documentary evidence to support these claims. No receipt. Not even an invoice was produced. Nevertheless, it is apparent from the Claimant's statement of case, his affidavit in support of the assessment, and from the obvious seriousness of the charges preferred against him, that the Claimant's case would have demanded much skill and attention of the Claimant's counsel to represent him generally, and in particular to secure his bail after the withdrawal of the murder charge.

So, on the authority of **Greer v Alstons Engineering Sales and Services Ltd (2003) 63 WIR, 388 @ 7, 8 and 9; Isaac Peters v Grenada Electricity Services Ltd**, Grenada Civil Appeal No. 13 of 2005), I award the Claimant the nominal sum of **\$20,000.00** as legal fees.

[7] As to travelling expenses, I am content to accept that the Claimant incurred transportation costs for attending court in the amount of \$140.00. I award him that amount.

[8] **Summary of Special Damages**

(i)	Legal fees	\$20,000.00
(ii)	Transportation	<u>\$ 140.00</u>
	Total	\$ 20,140.00

General damages

[9] The Claimant is to be compensated for the disadvantage suffered by him as a result of the act or default of the Defendants. The object of an award of damages is to compensate the Claimant for the damage and loss suffered.

[10] The Claimant's evidence is that he was locked up for over two months pending the hearing of the charges against him. According to the Claimant, he was detained in cells at Roseau Police Station, Mahout Police Station and at Stockfarm State Prison in a security block designed for high risk prisoners. The cell in which he was placed at Mahout Police Station was dark, with only a small window through which he obtained little air. He slept on concrete with nothing to cover himself. At Stockfarm State prison, the Claimant had to urinate and defecate in a bucket. The Claimant stated that he found this to be humiliating and embarrassing as he had to do this in the presence of other prisoners. . This ordeal he endured for **three months** until he was released on bail. Following several court appearances, the charges were dismissed. . The First Defendant preferred charges against Claimant when there was no evidence to do so. As such, they were actuated by malice, Claimant asserted. Claimant stated that he was unjustly harassed and ought to be compensated. Also, Claimant stated that he was inconvenienced by having to attend court on various occasions which he set out in a scheduled placed before the court.

[11] Counsel for the Claimant submitted that the Claimant was deprived of his liberty from the time that he was invited to attend the police station by the first Defendant and arrested on suspicion of murder and placed in the cells from time to time until he was eventually released from custody.

[12] Counsel referred to the various times that the Claimant attended court culminating in the dismissal of the charges against him.

[13] Counsel next outlined the actions of the first Defendant and went on to submit that the actions of the first defendant leave much to be desired, and were in flagrant disregard for the Claimant's rights. Counsel urged the court to award compensation to show that the law will not tolerate such behaviour.

- [14] The Claimant's counsel next submitted that by the Defendant's actions the Claimant was subjected to the inconvenience of having to be in a hot cell with a small window, and forced to sleep on a cold concrete floor; Also, the inconvenience of having to attend court on various occasions. In counsel's view, the charge of murder has a certain amount of stigma attached to it. Counsel stated that when the charge was read to the Claimant, the court room was also packed with spectators, court staff, police officers and lawyers. According to counsel, outside the court room was also packed with members of the public all waiting to catch a glimpse of the Claimant - much to his distress. The Claimant stated, and his counsel submitted that claimant was remanded in prison for about three months before the prosecution dropped the charges for murder, when they knew full well that bail for murder was not easily had, and they had no evidence whatsoever to prove that the Claimant had anything to do with the murder of Marcus Peltier. For all this, the Claimant ought to be compensated and the award here should reflect the punishment for the arbitrary and outrageous use of executive power, counsel submitted.
- [15] Counsel referred the court to various cases within and without Dominica as being comparable:
- (i) **Myster Peter Matthew v the Attorney General of Dominica** Claim No 472 of 2000 where in 2006, Justice Lewis S. Hunte awarded the Claimant the sum of \$20,000.00 for damages for false imprisonment and \$5,000.00 for exemplary damages.
 - (ii) **Ellis v Ramsford Fraser, and the Attorney General of Jamaica**, Jamaica Civil Appeal No 37 of 2001, where in 2004, the Jamaica Court of Appeal awarded the Claimant \$2, 1 million for malicious prosecution and aggravated damages in a situation where the Plaintiff/Appellant was taken into custody, detained and interrogated for seven hours, then charged with several offences under the Larcener Act, interdicted from duty. Thereafter the charges were dismissed.
- [16] Counsel submitted that since the Claimant in this case was detained for some **84 hours**, he should be awarded \$200,000.00 for false imprisonment.
- [17] As to malicious prosecution, counsel suggested the figure of \$100,000.00. She provided no authority on this suggestion.
- [18] In relation to exemplary damages, counsel submitted that the Claimant should be awarded the sum of \$10,000.00 under this subhead, for a grand total of \$310,140.50 for damages on the whole of the Claimant's claim.
- [19] Counsel did not refer me to the case of **Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica**, Claim No DOMHCV2006/0038, where in 2008, this court awarded Raymond Warrington \$20,000.00 for false imprisonment for six

hours and \$25,000.000 to Cleville Mills for false imprisonment for 9 hours; and the sum of \$10,000 to each Defendant for aggravated and exemplary damages.

- [20] Nor did counsel refer me to the case of **Elihu Rymer v The Commissioner of Police et al** BVI Civil Appeal No 13 of 1997 where in 1999, the Court of Appeal, awarded the Claimant/Appellant \$20,000.00 for three hours unlawful detention in a situation where none of the charges against the Appellant were pursued before the Magistrate. They were either struck out or dismissed for want of prosecution. These were small charges of disorderly conduct, unlawfully obstructing the passage of a police vehicle, threatening language and resisting a police officer.
- [21] Being guided by the awards in the cases above, and taking into account the period of confinement of the Claimant, I believe the sum of \$100,000 is reasonable for the Claimant's confinement.
- [22] In regard to malicious prosecution, the Claimant is entitled to recover for injury to reputation as well as injury to feelings, indignity, humiliation and disgrace caused to him for maliciously putting the law in motion against him – by the fact of preferring charges against him.
- [23] Murder and conspiracy to commit murder are very serious charges. There was no reasonable or probable cause as set out in the particulars in the pleadings. The charges were dropped. But the Claimant was faced with the fear and anxiety of a groundless prosecution and conviction against him. His reputation is likely to have suffered as a result of those charges. The Claimant was humiliated and distressed by the attendance of the crowd in and out of court seeking to get a glimpse of him.
- [23] In **Dexter Smith v The Attorney General of Grenada et al**, Claim No GDAHCV2008/328, the High Court of Grenada (Price-Findlay J), in 2010 awarded the Claimant \$40,000.00 for malicious prosecution in a situation where the Claimant was arrested on charges of possession of a controlled drug, importation of a controlled drug and trafficking of a controlled drug. The court found that the Third Defendant instituted the proceedings without an honest motive; that there was no credible evidence that the Claimant was even in possession of the bag, or the drug contained in the bag.
- [24] In **Dexter Smith**, the Claimant suffered in that he was suspended without pay from his job from 9th December 2004 to 8th March 2008. His trial did not conclude in the Magistrate's court until December 2007. His insurance policy lapsed and he lost his property at Woodlands.
- [25] Being guided by **Dexter Smith's** case, I award the Claimant the sum of **\$50,000.00** for malicious prosecution.

[26] As to exemplary and aggravated damages, the amount to be awarded is in the discretion of the Court. The discretion is not to be arbitrary or unlimited. The Court is not at liberty to award by way of exemplary damages any amount, regardless of how much it may be. The amount should be that which the Court considers to be reasonable and adequate to punish and deter the defendants and others, and to teach the wrong doer that "tort does not pay" while at the same time add to the reparation to the Claimants beyond the compensatory damages awarded.

[27] There is no evidence to suggest that the First Defendant acted in an oppressive manner toward the Claimant.

[28] I am not satisfied that the attitude of the first Defendant warrants an award of both exemplary and aggravated damages. I propose to an award for exemplary damages only. I consider \$10,000.00 to be adequate and reasonable in the circumstances of this case.

Interest

[29] In **Mavis Williams v Dominica Agricultural and Industrial Development Bank**, Civil Appeal No 20 of 2005, Barrow JA accepted that in the Commonwealth of Dominica, the Judgment Act, Cap 4:70 regulates the award of interest on damages. Section 7 of the **Judgment Act Chapter 4:70** of the Revised Laws of Dominica reads: "Every judgment debt shall carry interest at the rate of 5% a year from the time of entering up the judgment..." Clearly, the Judgment Act confers no jurisdiction on the court to award interest between the arising of the cause of action and judgment. It confers jurisdiction to award interest for the period after judgment:

[30] The Claimant is therefore entitled to post judgment interest only.

Costs

[31] Pursuant to CPR 12.13, the Claimant is entitled to be heard on costs. As such, if the parties cannot agree on costs, I invite them to file and exchange submissions within 14 days of the date of the delivery of this judgment for the consideration of the court.

[32] Summary of General damages:

(i)	False imprisonment	\$100,000.00
(ii)	Malicious prosecution	\$ 50,000.00
(iii)	Exemplary	<u>\$ 10,000.00</u>
	Total	\$ 160,000.00

Conclusion

[33] In the result, I give judgment for the Claimant as follows:

1. Special damages in the sum of \$7,010.50;
2. General damages in the sum of \$160,000.00.
3. Interest on the total judgment sum at the statutory rate of 6 per cent per annum from today's date to date of final payment.
4. Costs to the Claimant to be assessed if not agreed. Should the parties fail to reach agreement, then the court will consider written and or oral submissions on the issue of costs, such submissions to be filed and exchanged within 14 days of the date of delivery of this judgment.

[34] I am indeed grateful to counsel for her very helpful submissions.

Pearletta Lanns
Master