

COMMONWEALTH OF DOMINICA

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



CLAIM NO DOMHCV2010/0012

BETWEEN:

OMARRA SMALL

Claimant

AND

**MICHAEL LAUDAT
THE ATTORNEY GENERAL OF DOMINICA**

Defendants

Appearances:

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

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2011: March 1, October 17
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- [1] This is an assessment of damages in an action for the torts of false imprisonment and malicious prosecution on charges of murder and conspiracy to murder.
- [2] The issue of liability was determined on 9th March 2010 when default judgment was entered against the Defendants for their failure to contest the Claimant's statement of case.
- [3] The claim arose after the murder charge was withdrawn after 78 days of incarceration. The charge for conspiracy to commit murder was dismissed on 15th July 2008 as the prosecution failed to offer evidence against the Claimant.

Special damages

- [4] In his Statement of Claim, the Claimant claims special damages in the sum of Ten Thousand Dollars (EC\$10,000.00) for legal fees for his defence, and for securing his bail; and \$10.50 for transportation to and from court. In paragraph 20 of his supporting affidavit, the Claimant deposed:

"I paid my lawyer Mrs Dawn Yearwood-Stewart to defend me and for bail in the sum of \$10,000. I travelled to Roseau Magistrate's Court 7 days at \$150.00 per day. I would like to be refunded my out of pocket expenses."

- [5] However, the Claimant failed to provide any documentary evidence to support these claims – No receipt. Not even an invoice. Nevertheless, it is apparent from the Claimant's affidavit in support of the assessment, and from the obvious seriousness of the charges preferred against the Claimant, that the 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 charge of murder. So, despite the inadequacy of the evidence, 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 **\$5,000.00** as legal fees.

- [6] As to travelling expenses, I am content to accept that the Claimant incurred transportation costs for attending court in the amount of \$10.50 being \$150.00 per day for seven days. I award him that amount.

- [6] **Summary of Special Damages**

(i)	Legal fees	\$5,000.00
(ii)	Transportation	<u>\$ 10.50</u>

Total

\$ 5,010.50

General damages

- [7] 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 loss and damages suffered.
- [8] 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, the cells in which he was placed were hot, dirty and reeked of human faeces, stale urine, food and garbage which caused him grave distress. Following several appearances at the Roseau Magistrate's Court, the charges against him were dismissed and he was discharged. He stated that he was inconvenienced by having to attend court on various occasions as set out in a schedule of court attendance placed before the court.
- [9] 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.
- [10] Counsel referred to the various times that the Claimant attended court, culminating in the dismissal of the charges against him.
- [11] 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.

[12] 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 which was wreaked of garbage, human faeces a stale urine; and 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 charges were 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 deposed, and his counsel submitted that Claimant was remanded in prison for over two months before the prosecution dropped the charges for murder when they (the prosecution) 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.

[13] 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 \$5000.00 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 Larceny Act, and interdicted from duty. Thereafter the charges were dismissed.

- [14] Counsel submitted that since the Claimant in this case was detained for 75 hours, he should be awarded \$200,000.00 for false imprisonment. It puzzles me that counsel in her submissions submitted that the Claimant was detained for 75 hours, when the Claimant in his supporting affidavit stated that he was detained for "over two months" (See paragraph 16; of Claimant's supporting affidavit); "82 days or 1968 hours." (See paragraph 19 of Claimant's supporting affidavit).
- [15] As to malicious prosecution, counsel suggested the figure of \$100,000.00.
- [16] In relation to aggravated and exemplary damages, counsel submitted that the Claimant should be awarded the sum of \$10,000.00 on each subhead, for a grand total of \$330,010.50 for damages on the Claimant's claim.
- [17] 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 the first claimant \$20,000.00 for false imprisonment for six hours and \$25,000.000 to the second Defendant for false imprisonment for 9 hours and the sum of \$10,000 to each Defendant for aggravated and exemplary damages.
- [18] 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.
- [19] 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.

- [20] 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.
- [21] 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.
- [22] 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 and importation 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.
- [23] 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.
- [24] Being guided by **Dexter Smith** case, I award the Claimant the sum of \$50,000.00 for malicious prosecution.

[25] 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.

[26] There is no doubt that the first Defendant acted in an oppressive manner as evidenced by paragraph 6 of the Claimant's affidavit in support. The unchallenged affidavit evidence is that the First Defendant came to the cell where the Claimant was and "shoved" a paper at him which indicated that he, the Claimant was charged with murder and conspiracy to commit murder of Marcus Peltier. This, he asserted caused him "great distress."

[27] I am satisfied that the attitude of the first Defendant warrants an award of exemplary and aggravated damages. I intend to follow the course of Saunders J. in **Abraham v. The Attorney General of Anguilla**, Civil Suit No 29 of 1999 [Anguilla], and make a lump sum award rather than breaking down the awards to specify what element of it falls under exemplary damages and what falls under aggravated damages. I take into account that the Claimant would be awarded a lump sum instead of what he would have received over a protracted period. I consider \$20,000.00 to be adequate and reasonable in the circumstances of this case.

Interest

[28] 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 would invite them to file and exchange submissions within 14 days of the date of the delivery of this judgment for consideration of the court.

[28] Summary of General damages:

(i)	False imprisonment	\$100,000.00
(ii)	Malicious prosecution	\$ 50,000.00
(iii)	Exemplary and Aggravated damages	<u>\$ 20,000.00</u>
	Total	\$ 170,000.00

Conclusion

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

1. Special damages in the sum of \$5,010.50;
2. General damages in the sum of \$170,000.00.
3. Interest on the total judgment sum at the statutory rate of 5 per cent 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.

[30] I am indeed grateful to Defendant's counsel for her very helpful submissions.

Pearletta Lanns
Pearletta Lanns

Master

