

ANTIGUA AND BARBUDA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO ANUHCV2012/0152

**In the Matter of sections 3, 5 and 18 of the
Antigua and Barbuda Constitution Order
1981**

AND

**In the Matter of section 3(2) of the Offences
Against the Person Act**

AND

**In the Matter of an Application for an
Administrative Order**

AND

**In the Matter of an Application for interim
Relief**

BETWEEN:

EUSTACE ARMSTRONG

Applicant/Claimant

AND

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Respondent/Defendant

Appearances:

Dr David Dorset for the Applicant/Claimant
Mrs Carla Brookes-Harris, Crown Counsel
for the Respondent/Defendant

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2012: October 11; November 28
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RULING

- [1] **LANNS, J [Ag]:** On 10th May 2012, in Open Court, Michel J made an order in the following terms:

"IT IS HEREBY ORDERED THAT:

- (1) The sentence of the Claimant pronounced on 31st January 1995 to be kept at Her Majesty's Prison in safe keeping until her Majesty's pleasure is known is hereby declared invalid and is corrected to a sentence of detention at Her Majesty's Prison at the Court's pleasure;
 - (2) The Court directs that the Claimant be brought before a judge of the Criminal Division of the High Court at the earliest convenient time upon application to review the detention of the Claimant from 31st January 1995 to present time so that the Court can make its pleasure known in relation to the continued detention of the Claimant;
 - (3) The Claimant's application for damages for false imprisonment is adjourned for consideration on a date to be fixed by the Court Office;
 - (4) Leave is hereby given to the Defendant to file and serve written submissions with authorities within six (6) weeks in response to the submissions filed on behalf of the Claimant on 3rd May 2012;
 - (5) Leave is hereby given to the Claimant to reply if necessary within two (2) weeks of being served with the submissions of the Defendant."
- [2] Pursuant to the Order of Michel J, the Respondent/Defendant filed written submissions and authorities, prepared by Ms Alicia Aska, Crown Counsel in the Chambers of the Attorney General. The Claimant declined to reply and relied on his written submissions prepared by Dr Dorset and filed on 3rd May 2012 on the substantive matter.
- [3] Counsel for the parties indicated that no further hearing was necessary as they had no intention of cross examining the affiants on their affidavits; and thus, they agreed that the matter be considered on the written representations submitted by the parties in accordance with CPR 26.2 (n).

BACKGROUND

- [4] On 31st January 1995, Eustace Armstrong (Armstrong) was convicted before Benjamin J for the murder of Rolston Samuel, committed in January 1993. .

- [5] Armstrong was under the age of 18 years at the time of the offence and, pursuant to section 3(1) of the Offences against the Person Act, he was sentenced "to be kept at Her Majesty's Pleasure at Her Majesty's Prison in safe keeping until Her Majesty's pleasure be known".
- [6] Armstrong appealed against his conviction, and on 22nd July 1996, the Court of Appeal (Hon CM Dennis Byron, Hon Satrohan Singh, JJA) and Hon Albert Matthew JA [Ag] dismissed his appeal.
- [7] On 5th March 2012, Armstrong filed a Fixed Date Claim Form seeking the following reliefs:
- (1) A declaration that the sentence pronounced on the Claimant that he be detained "during Her Majesty's pleasure" is in contravention of section 5 (1) (b) of the Antigua and Barbuda Constitution Order 1981 and is accordingly quashed and replaced by an order that the Claimant be detained at the court's pleasure.
 - (2) An order that the Claimant be brought forthwith to a judge of the Criminal Division of the High Court of Justice so that the court's pleasure may be known with respect to the place and conditions of any further detention;
 - (3) A declaration pursuant to section 18 of the Antigua and Barbuda Constitution Order 1981 that the absence of periodic review of the Claimant's sentence of detention was a breach of the Claimant's right not to be deprived of his liberty except by due process as recognized and declared by section 3 (a) of the Constitution;
 - (4) A declaration pursuant to section 18 of the Antigua and Barbuda Constitution Order 1981 that the absence of periodic review of the Claimant's sentence of detention was a breach of the Claimant's right to protection of the law as recognized and declared by section 3 (a) of the Constitution.
 - (5) Damages, to include vindictory damages, for breach of the Claimant's right (1) not to be deprived of his liberty except by due process; and (2) to protection of the law on account of the absence of periodic review of the place and conditions of the claimant's detention during pleasure;
 - (6) A declaration that the Applicant is entitled to compensation pursuant to section 5 (7) of the Constitution for deprivation of his right to personal liberty whilst being detained during Her Majesty's pleasure contrary to section 5 (1) (b) of the Constitution.
 - (7) An order that the Defendant do pay compensation as provided for by section 5(7) of the Constitution for the unlawful detention of the Claimant, the quantum

of such compensation in the form of damages, and to include vindictory damages, to be assessed;

(8) A declaration that the detention of the Claimant during Her Majesty's pleasure being unconstitutional and unlawful constitutes the tort of false imprisonment.

(9) Damages for false imprisonment

(10) Costs as assessed pursuant to CPR 2000, r 56.13 (5)

(11) Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act the cause of action arising on 31st January 1995.

(12) Interest pursuant to section 7 of the Judgments Act;

(13) Any other relief that the court deems fit.

[8] Concurrently with the filing of the Fixed Date Claim Form, the Applicant filed a Notice of Application pursuant to CPR 17.3 seeking reliefs (1) and (2) above.

[9] The Claimant swore to an affidavit in support of the Application and this Affidavit was also used to satisfy the requirement of CPR 56.7 (3) which stipulates that the applicant must file with the claim form evidence on affidavit.

[10] The Defendant filed an Affidavit in response to the Fixed Date Claim and the Notice of Application. When the matter came before Michel J for hearing on 10th May 2012, Dr David Dorset appeared for the Claimant/Applicant and Mr Justin Simon, QC appeared for the Defendant/Respondent.

[11] At the First hearing, Learned QC conceded that the sentence imposed on the Claimant infringes the Claimant's Constitutional rights under section 5(1) (b) of the Constitution. As a consequence, the Court, sitting in its civil jurisdiction, made the order that I have reproduced at paragraph 1 herein, thereby effectively changing the sentence of the Claimant from 'Her Majesty's pleasure' and replacing it with the correct sentence – 'Court's pleasure'. The learned Judge also gave directions for the purpose of 1) having the Claimant's detention reviewed by a Court sitting in its criminal jurisdiction, so that the Court's pleasure be known; 2) determining whether or not the detention of the Claimant

during Her Majesty's pleasure, being unlawful and unconstitutional, constitutes the tort of false imprisonment; 3) determining whether or not there is a valid claim for false imprisonment; and if so 4) what quantum of damage is the Claimant entitled to recover? That was the brief background to the proceeding now before the Court.

[12] When this matter came before me in open court on 11th October 2012, for consideration of the issue as to whether the Claimant is entitled to damages for false imprisonment, I enquired of Dr Dorset whether the Claimant has already made the application to the Judge of the Criminal Division as ordered by Michel J. Dr Dorset replied that no application has been made because there is a quandary as the person who prosecuted the matter is now the Judge of the Criminal Division of the High Court.

[13] I then questioned whether it is prudent to determine the issue of damages for false imprisonment, before the Claimant is brought before the Criminal Division of the High Court so that the Court's pleasure may be known. Dr Dorset replied "We see no reason why it should not." Ms Aska offered no response.

ISSUES

[14] The main issues which arise for determination seem to be

- a) Whether or not the Claimant was falsely imprisoned as a result of the invalid sentence?
- b) If so, what quantum of damages, if any, should the Claimant recover?

DISPOSITION

[15] Having considered the Order of Michel J dated 10th May 2012, directing that the Claimant be brought before a judge of the Criminal Division of the High Court at the earliest convenient time, upon application, to review the detention of the Claimant from 31st January 1995 to present time, so that the Court can make its pleasure known in relation to the continued detention of the Claimant;

And upon counsel for the Claimant indicating to the Court that the Claimant has not yet been brought before the Criminal Division of the High Court, with the result that the Court's pleasure is not yet known;

And the Court, being of the opinion that the determination as to the validity of the claim in respect of damages for false imprisonment, and the consequential assessment of damages, if any will be dependent on the judgment in respect of the review of the continued detention of the Claimant and knowledge of the Court's pleasure;

And the Court, being also of the opinion that it would be inappropriate and/or imprudent to determine the issue of the Claimant's entitlement to damages for false imprisonment before the review of the Claimant's continued detention and or before the court's pleasure is known; and that to do otherwise would be preempting the judgment in respect of the re-sentencing of the Claimant;

DOTH HEREBY ORDER THAT

- (1) The Claimant's Claim for damages for false imprisonment is stayed pending the review by a Judge of the Criminal Division of the High Court, of the detention of the Claimant from 31st January 1995 to present time, and the court's pleasure is made known.

- (2) The Court will resume the hearing on application by either side, following delivery of the Judgment by a judge in the Criminal Division of the High Court, on the Court's review of the detention of the Claimant, and the Court's pleasure being made known in relation to the continued detention of the Claimant.


Pearlitta E Lanns
Judge of the High Court [Ag]