

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

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2001/0261

BETWEEN:

MALCOLM PAYNE

Claimant

AND

CHIEF MAGISTRATE
COMMISSIONER OF POLICE
ATTORNEY GENERAL

1st Defendant
2nd Defendant
3rd Defendant

Before:

Master Charlesworth Tabor (Ag.)

Appearances:

Mrs. Maureen Payne-Hyman for the Claimant
Miss Luann DaCosta for the Defendant

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2012: November 5
2013: February 8
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RULING

[1] **TABOR, M (Ag.):** This is a claim for damages for false imprisonment of the claimant by the second defendant and his agents. In his amended statement of claim filed on 8th March, 2012 the claimant is seeking the following relief:

- (i) Damages;
- (ii) Exemplary damages;
- (iii) Legal Practitioners costs; and
- (iv) Interest pursuant to the Eastern Caribbean Supreme Court Act.

Background Facts

- [2] This claim arises out of a child maintenance matter between the claimant and Maria Hughes, the mother of the child in question. On 2nd February, 2000 the claimant was ordered by a Magistrate to pay into Court the sum of \$250.00 per week towards the maintenance of the child until she attains the age of sixteen years or until the order is varied or revoked by a Court of competent jurisdiction.
- [3] There appears to have been some contention with respect to the amount of child maintenance in arrears, since the claimant filed a complaint in the Magistrates Court on 30th November, 2005 to have that issue addressed. The decision on this complaint was delivered by the Magistrate on 26th May, 2009. The decision went against the claimant and he applied to the Court of Appeal on 9th June, 2009 for a stay of the decision pending the outcome of the appeal. The grounds of appeal were as follows:
- (i) That the Learned Magistrate erred in law and on the facts in finding that the monies that the Complainant paid directly to the Respondent were not for the benefit and maintenance of their child.
 - (ii) That the Learned Magistrate erred in law and on the facts in that the Respondent could not provide any receipts or documents to prove her contention that the payments were paid to her for typing services and not for the maintenance and benefit of their child.
 - (iii) That the Learned Magistrate failed to place sufficient weight on the evidence and the receipts before the Court provided by the Complainant to support his contention.
 - (iv) The Learned Magistrate misconstrued and/or totally rejected the evidence of the Complainant without giving due consideration to the same.
 - (v) The decision was against the weight of evidence.
- [4] On 7th March, 2010 the claimant was arrested on a warrant that was issued on 29th July, 2008 which has given rise to the instant case.
- [5] The matter went to mediation on 26th January, 2012 and a provisional agreement was reached whereby the claimant proposed a settlement of \$80,000.00 maximum and \$50,000.00 minimum. The parties subsequently failed to reach a final settlement and agreed that the matter should be referred back to the Master for the assessment of damages, since the defendants accepted liability.
- [6] On 12th June, 2012 when the matter came before the Master for case management, she ordered that the claimant should file and serve evidence, submissions and authorities in support of assessment of damages by 26th June, 2012. The defendants were ordered to file and serve evidence, submissions and authorities in reply by 18th July, 2012.

Claimant's Submissions

- [7] Counsel for the claimant contends that the claimant was arrested on a warrant that was defective in a number of respects such as the absence of the magistrate's court stamp on

the warrant, the absence of a date on the warrant (the date was indicated on the Information on Oath attached to the warrant) and the failure to state the amount of money outstanding. The date on the Information on Oath was 29th July, 2008, which was approximately 21 months after the maintenance period ended. The maintenance ended when the child turned 16 years old on 5th October, 2006, however, the warrant dealt with a period for maintenance beyond the child's sixteenth birthday.

- [8] Counsel further contends that the defects on the warrant were so obvious and apparent that it is hard to accept that the police did not notice the defects. It is also noted that the claimant's request to see a copy of the arrest warrant was refused and the arresting officers subsequently informed the claimant that they did not have the warrant in their possession. Counsel advanced the view that no warrant of arrest should have been issued for the claimant after the 30th November, 2005, given his complaint filed on that date involving issues relating to the child's maintenance, and his subsequent appeal on 9th June, 2009 to the Court of Appeal.
- [9] The claimant was arrested by the police with gun drawn while he was waiting for his vehicle tire to be repaired at a tire repair shop in Golden Grove. He was then taken to the St. John's police station and placed in a cell with other prisoners, rather than kept at the guard desk. The time spent at the station is not clear since in his Statement of Claim a time of six (6) hours is indicated, while in the legal submissions a time of four (4) hours is indicated. On the way to the station, Counsel said that the police "parade" the claimant along Market Street in the police vehicle since they stopped twice for no apparent reason. She indicated that the claimant felt that this was done to cause humiliation when persons would see him in the vehicle.
- [10] At the station the claimant was put in a cell that was described as dirty, disgusting and filthy. It was said to be also dark, since there were no windows and the stench was unbearable as there were human feces and urine in the cell. Counsel for the claimant also indicated that the cell was full of mosquitoes, cockroaches and other bugs and that whilst the claimant was in the cell one of the prisoners needed to urinate and urinated next to the claimant. Another situation indicated by counsel, which was quite upsetting to the claimant, was when rats descended on a Kentucky Chicken box which was dropped to the ground by one of the prisoners when he had finished eating.
- [11] Counsel is of the view that the conditions of the claimant's imprisonment were inhumane and tantamount to cruel and unusual punishment and an abuse and misuse of police powers. She posits that no human being should be kept in those conditions, far less for a professional person such as the claimant who has no previous criminal convictions.
- [12] Counsel contends that false imprisonment is actionable per se and that the claimant should be awarded general damages for the infringement of his civil liberties. It is further contended that exemplary damages should also be awarded to the claimant for the conditions in which he was kept and for the unnecessary show of force and use of guns to arrest him. With respect to the issue of exemplary damages, Counsel cited the following cases to support her contention:

- (1) *Attorney General of Trinidad and Tobago v Siewchand Ramanoop* (UKPC 2005);
- (2) *Kishola Antonia Levine, A Minor (By her Guardian and Next Friend Bernadette Olive Levine) v Kenny Smart and the Attorney General of Grenada* (GDAHCV 2007/0296); and
- (3) *Atain Takitota v The Attorney General* (UKPC 71 of 2007).

Defendants' Submissions

- [13] Counsel for the defendants in her submissions underscored the inconsistencies in the claimant's Amended Statement of Claim and in his submissions with respect to the period of time spent at the police station. She submitted that the claimant spent approximately three (3) hours at the station, held partly in the cell and partly at the guard desk, and not the 6 hours or 4 hours advanced in the claimant's documents. She noted that upon being advised by the Magistrate's Court that the warrant was flawed the claimant was released by the police on the same day of the arrest.
- [14] While admitting that the warrant of arrest used to arrest the claimant was flawed; Counsel contends that although the period of support mentioned in the warrant had expired, not the entire period was incorrect since it also covered the period prior to the child's sixteenth birthday for which the claimant had outstanding maintenance arrears.
- [15] Counsel submits that this case is one which involves the measure of damage for an error of law and the measure of damage for approximately 3 hours detention and should include nothing further. She further submits that the claimant has not pleaded or proved any loss or damage suffered by him and that there is no evidence for the Court to conclude that he did indeed suffer loss or damage. With respect to the issue of exemplary damages, counsel submits that there are no circumstances which would justify an award of exemplary damages.
- [16] I should note that the issue of loss does not arise in the instant case since the claimant is not seeking compensatory damages. It should be noted as well that false imprisonment is a tort which is actionable per se and does not require any allegation or proof that damages were suffered. As indicated in Halsbury's Laws of England¹, "The gist of the action of false imprisonment is the mere imprisonment. The Claimant need not prove that the imprisonment was unlawful or malicious, but establishes a prima facie case if he proves he was imprisoned by the Defendant, the onus then lies on the Defendant of proving a justification".
- [17] Counsel cited the cases of *James Christian v The Attorney General of Antigua and Barbuda* (No. 599 of 2007) and *Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica* (No. 38 of 2006) to underscore the possible quantum of damages that the defendant would reasonably be entitled to. In the former case, the claimant was detained for twenty hours beyond the forty-eight hours maximum period and a settlement was reached with the Attorney General's office in the sum of

¹Halsbury's Laws of England, 4th Edition, Volume 45, paragraph 1325

\$10,000.00. In the latter case, the court awarded the first claimant the sum of \$20,000.00 for false imprisonment for a period of six (6) hours. In light of these cases and in particular the **Raymond Warrington and Karl Peters v Cleville Mills and the AG of Dominica** case, counsel submitted that the claimant in the instant case should be awarded no more than \$10,000.00 for the error of law and his arrest and detention.

Analysis

- [18] This whole incident started out as a very unfortunate one in that the police embarked on a mission to effect an arrest on a warrant which perhaps unknowing to them was defective. However, what has made this unfortunate situation even worse was the subsequent behavior of the police officers in the manner in which their mission was carried out. To begin with, it is hard to understand why four officers with gun in hand would swoop down upon an individual to effect an arrest for child maintenance. This display of force seems rather excessive and disproportionate to the exigencies of the situation.
- [19] Also quite troubling was the inability of the police to produce to the claimant upon his request a copy of the warrant that was used to effect his arrest. There are procedures that the police are expected to follow in the discharge of their duties as law enforcement agents of the State. Some of these are grounded in statute and others in the common law. Police officers should therefore ensure that in the performance of their duties that they adhere to and abide by the law and principles that govern their conduct. They should also conduct themselves in as professional a manner as possible. Clearly, the claimant's contention which was not refuted, that he was "paraded" on Market Street when the police stopped their vehicle twice for no apparent reason other than perhaps for the claimant to be seen, was unnecessary.
- [20] There is no denying the fact that the conditions of the cells at the St. John's Police Station that are used for the detention of arrested individuals are deplorable. An arrested individual taken to the St. John's Police Station is either held at the guard desk where there is a detention area or placed in the cell. The claimant when he was arrested was placed initially in the cell and then subsequently at the guard desk prior to his release from detention. Given the nature of the crime for which the claimant was arrested and the fact that he was not known to the law, it was absolutely uncalled for for the claimant to have been detained in the cells.
- [21] In all the circumstances of this case, I am of the view that the claimant should be awarded damages for false imprisonment and also exemplary damages for the conduct of the police in the manner in which they discharged their duties. With respect to the latter, this can only be granted where according to rule 8.6(3) of the Civil Procedure Rules 2000 the claimant indicates in the claim form that he is seeking aggravated damages and/or exemplary damages. In the instant case one of the reliefs that the claimant is seeking is exemplary damages.
- [22] In the determination of the general damages that should be awarded to the claimant, I have relied on the Grenada case of **Kishola Antonia Levine** where the claimant was detained for four (4) hours and the court made an award of \$10,000.00; and the Dominica

case of **Raymond Warrington** where the claimant was detained for six (6) hours and the court made an award of \$20,000.00. Counsel for the defendants in using the latter case as a precedent, argued that the claimant in that case was given \$3,333.33 for every hour that he was detained and suggested that the claimant in the instant case should be treated in a similar manner. I have accepted counsel's reasoning and will therefore award the claimant \$10,000.00 in damages.

[23] In making an award for exemplary damages, the amount is in the discretion of the court and should be one that the court considers to be reasonable and adequate to send a message to the defendants that their conduct was uncalled for and that similar conduct in the future would not be condoned. Again, I will use the **Kishola Antonia Levine** and the **Raymond Warrington** cases as a guide in the award of exemplary damages to the claimant. In the former case, the court made an award of \$5,000.00 for aggravated damages and in the latter an award of \$10,000.00 for aggravated and exemplary damages. The instant case is not very dissimilar to the **Raymond Warrington** case with respect to the humiliation that the claimant faced at the hands of the police, and is perhaps worse in terms of the circumstances surrounding the claimant's arrest and the conditions of his detention. In the circumstances, therefore, I will award the claimant \$10,000.00 in exemplary damages.

Conclusion

[24] I therefore order as follows:

- (1) General damages in the sum of \$10,000.00;
- (2) Exemplary damages in the sum of \$10,000.00;
- (3) Interest on each sum at the rate of 5% per annum from the date of judgment until payment; and
- (4) Costs in the sum of \$5000.00.

Charlesworth Tabor
Master (Ag.)