

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2014/0021

BETWEEN:

ROYAL GEORGE

Claimant

and

THE ATTORNEY GENERAL OF COMMONWEALTH OF DOMINICA

Defendant

Before:

Ms. Agnes Actie

Master

Appearances:

Mr. Danielle Edwards with Mr. David Bruney of counsel for the claimant

Ms. Joanne Xavier Coffy with Ms. Tamika Hyacinth and MsTara Levi of counsel for the defendant

2015: May 6;
June 5 .

JUDGMENT

[1] **ACTIE, M.:** This matter comes for assessment of damages. The claimant having obtained judgment in default of defence by order of the court dated 7th October 2009.

Background Facts

[2] On Friday, 25th April 2008, the claimant was issued with a traffic ticket with a fixed penalty of \$150.00. The claimant was required to appear before the Magistrates' Court on a date stated on the ticket in default payment on the date stipulated on the ticket. The claimant failed to pay the fine on the date endorsed on the ticket and was accordingly summoned to attend court on 20th May 2008. The claimant

received a further summon to attend court on 2nd October 2008. However the claimant paid the fixed penalty on 14th July 2008.

[3] It is the claimant's case that about 9.30 a.m. on 13th August 2008, while walking the street he was unlawfully arrested by Sgt. Kent Matthew. The claimant avers that Sgt. Matthew informed him that a warrant had been issued for his arrest for failing to attend the Magistrate's Court on 20th May 2008. The claimant avers that Sgt. Matthew without producing a warrant for inspection, grabbed him by the rear waist of his pants and marched him down the street to the police station in full view of the public. The claimant avers that at the station he was searched and his keys and glasses were taken from him before being placed in a holding cell. The claimant further avers that he was assaulted by Sgt. Matthew who while advancing towards him in a threatening manner said "get in the cells before I burst your head on the wall. The claimant was eventually released after 50 minutes.

[4] The claimant states that he was wrongfully arrested and detained without lawful justification and arising from this incident claims damages.

Damages

[5] The claimant seeks damages in the sum of \$5,000.00 for unlawful arrest, assault and battery, \$10,000.00 for false imprisonment and \$12,000.00 for exemplary damages.

[6] In order to make an appropriate award guidance is usually obtained from similar cases decided within the jurisdiction. The claimant in support of the assessment of damages referred the court to the several authorities:

Tynes v Barr¹ - the appellant was arrested for disorderly conduct whilst on his private property. He was detained for three hours and subsequently charged. All charges were struck or dismissed for want of prosecution. The claimant was awarded \$1,000.00 for wrongful arrest and the sum of \$20,000.00.

¹ (1994) 45 WIR 7

Millette v Mc Nicholls² - the appellant stood bail for her son. The son did not appear on one occasion when the cases were called and the appellant was called upon to show cause why her recognisance should not be forfeited. She failed to do so and the Magistrate ordered her to pay a substantial amount and imprisonment on default. The appellant defaulted and was arrested and imprisoned for 132 days. The Court of Appeal affirmed the sum of \$145,000.00 awarded by the master for general damages.

Raymond Warrington et al v The Attorney General of Commonwealth of Dominica³ - the claimants were arrested and detained in isolated unsanitary police cells for six (6) hours and nine (9) hours respectively without food or water. The claimants were awarded \$20,000.00 and \$25,000.00 respectively for false imprisonment and \$10,000.00 for aggravated and exemplary damages.

Razack Mohamed v The Attorney General of Trinidad and Tobago⁴ - the claimant was arrested by police officers with guns drawn and was pushed roughly several times at the Grand Bazar shopping mall. The police used obscene and abusive language and threatened to shoot the claimant. The claimant was ordered to put his hands in the air with a gun pointed to his head. The court awarded the sum of \$145,000.00 for general damages for assault, false imprisonment and malicious prosecution inclusive of aggravated damages with exemplary damages in the sum of \$20,000.

[7] The defendant in response suggests a nominal sum of \$600.00 be awarded for assault and battery and a sum in the range from \$500 to \$1,000.00 for false imprisonment as there is no evidence that the claimant suffered any physical injury. The defendants aver that an award of \$1,500.00 for false imprisonment is appropriate in the instant case. The defendant also referred the court to several authorities including:

² (2000) 60 WIR 362

³ DOMHCV 2006/0038 delivered on 15th May 2008

⁴ TTCV 2009-02792 (Trinidad & Tobago delivered 9th May 2012)

Kieran Charles v Mervin Steel⁵ - the claimant was assaulted and battered by the defendants and was restrained by handcuffs for over two (2) hours. The court awarded the sum of \$5,000.00 as general damages for assault, battery and false imprisonment. The defendants contend that a lesser sum should be awarded to the defendant as Kieran Charles was beaten and handcuffed for 1 hour 10 minutes longer than the case at bar. The defendant contend that the claimant was simply held by the waist of his pants and but was not beaten or treated badly in any way.

Cain Alexander v The Attorney General⁶ the claimant was arrested dragged up the stairs and struck on her nose causing it to bleed and was detained for about three (3) hours by a police officer. The court awarded the sum of \$7,000.00 for assault, false imprisonment and wrongful arrest.

Malcom Payne v Chief Magistrate et al⁷ - the claimant was arrested on a defective warrant by a police officer with a gun drawn and was placed in a cell with other prisoners in unsanitary conditions for over 4 hours. The claimant was awarded general damages in the sum of \$10,000.00. The defendants aver that the amount awarded reflects an amount of \$2,500.00 per hour and submit that a lesser award should be made to the claimant in the instant case as the behavior of the officer was markedly different.

Analysis

[8] In making a determination for quantum for compensation of this nature **Mc Gregor on Damages** states that:

“There are no set rules for the determination of damages for wrongful arrest and false imprisonment and as such the quantum is purely within the discretion of the court. The main heads of damages are: loss of liberty, injury to feelings (ie the indignity, disgrace, humiliation and mental suffering arising from the detention); physical injury, illness or discomfort

⁵ SLUHCV2006/0247 delivered on 30th April 2008

⁶ SVGHCV2006/0150 delivered on 15th December 2007

⁷ ANUHCV2001/0261 delivered on 8th February 2013

resulting from the detention, injury to reputation and any pecuniary loss that is not too remote a consequence of the imprisonment⁸.

[9] Trespass to the person, whether by assault battery or false imprisonment is actionable per se without proof of actual damage. Thus in all cases nominal damages at least are recoverable, and substantial damages are recoverable for discomfort and inconvenience or injury to dignity even when no physical injury is proved. In **Danny Severin v the Attorney General of Saint Lucia**⁹ the claimant was approached and assaulted by police officers who purported to be arresting him. He was detained for more than 24 hours on a false accusation Belle J said:

“ 52. Since there could have been no true basis for arrest, the purported arrest was unlawful, and damages flowing directly from the unlawful act are recoverable since trespass is actionable per se.”

[10] The facts suggest that the claimant’s arrest was predicated on the mistaken belief that the claimant had failed to pay the fine or attend the magistrate’s court. The evidence suggests that the fine imposed was paid after the date fixed for payment or to attend court in lieu of payment. Although the police arrest was confused, it is to be taken that a reasonable valid arrest had been taken on a warrant for failure to pay the fine or attend court within the time prescribed. The reasonableness of the police officer’s suspicion at the time of arrest cannot be undermined, however the plain fact of the matter is that the claimant was unlawfully detained and must be compensated for wrongful arrest and false imprisonment.

[11] I am guided by the dicta of Chief Justice De la Bastide CJ (as he then was) in **Millette v McNicolls**¹⁰

“there is an element of initial shock when a person is first arrested and imprisoned which must first be taken into account and compensated in the assessment of damages for wrongful arrest and false imprisonment, regardless of whether the term of imprisonment is long or short. The extent of the compensation for the initial shock will depend on the facts of the case (and not the length of the imprisonment) and factors which maybe relevant include: the way in which the arrest and initial imprisonment are effected, any publicity attendant thereon, and any

⁸ Mc Gregor on Damages (15th ed) at para. 1619

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¹⁰ (2000) 60 WIR 362

affront to dignity of the person. While any normal person will adjust to some extent to the circumstances of imprisonment is to be taken, the longer the imprisonment lasts the more burdensome it becomes: and the length of the imprisonment is to be taken into account in this context. Damages in such cases should not however be assessed by dividing the award strictly into separate compartments (initial shock, length imprisonment, etc) but by taking all such factors into account and then approaching the appropriate figure in the round” compartments, one for initial shock, the other for length of imprisonment and so on. All the factors are to be taken into account and an appropriate figure awarded.”

[12] The facts indicate that the claimant was arrested at 9:30 a.m. in full view of the public. As far as false imprisonment is concerned the claimant would have suffered public humiliation, embarrassment and loss of his liberty in the process especially on a public street. The evidence is silent on the nature of activities on the street especially at the time of the arrest. Both sides placed heavy reliance on the authority of **Razack Mohamed v The Attorney General of Trinidad and Tobago**¹¹ where at the Grand Bazar shopping mall the claimant was arrested by police officers with guns drawn and pushed roughly several times. The police used obscene and abusive language and threatened to shoot the claimant. The claimant was ordered to put his hands in the air with a gun pointed to his head. It is evident that the humiliation and highhandedness in the **Razack’s** case are more severe than the instant case. There is no evidence of physical injury as a result of the unlawful arrest. The police officer merely hoisted the claimant by the back of his pants and frogged marched him to the police station.

[13] The authorities cited by the parties are all helpful however I am guided by the decision in **Cian Alexander v The Attorney General** (above) made in this jurisdiction where an award of \$7,000.00 was made for unlawful arrest and battery. I take into consideration that the claimant in the case at bar was only detained for fifty (50) minutes unlike **Cian Alexander’s** detention of three (3) hours. I take into consideration the claimant’s age, standing in society, injury to his feelings, the indignity, mental suffering, disgrace and humiliation suffered as a result of being

¹¹ TTCV 2009-02792 (Trinidad & Tobago delivered 9th May 2012

arrested on a public street although the assault and battery was slight. I take into consideration that **Cian Alexander's** was decided in 2007 and making sufficient adjustments for inflation since that decision I make a global award in the sum of \$7,000.00 comprising of \$2,000.00 for unlawful arrest, and \$ 5,000.00 for false imprisonment, assault and battery.

Exemplary Damages

[14] The claimant in the submissions for the assessment of damages seeks the sum of \$ \$12,000.00 for exemplary damages. The defendant avers that the claimant is not entitled to exemplary damages as it was not pleaded in the claim form or statement of claim. **CPR 2000** Part 8.6(3) states that a claimant who seeks aggravated and/or exemplary damages must so state in the claim form. The claimant concedes the failure to plead exemplary damages as required by the Rule but states that the court has an inherent jurisdiction to make an award for exemplary damages.

[15] A party should not exploit the inherent jurisdiction of the court in an effort to circumvent a rule or statutory provision that may impose or proscribe procedures in relation to pleadings or procedures. In **Fairfield Sentry Limited (In Liquidation) v Alfredo Migani & 22 others et al**¹² Pereira CJ [Ag] (as she then was) said:

“As to the resort to the inherent jurisdiction, whereas there is no doubt that the Court retains an inherent jurisdiction as was said in the cases of **Danone Asia PTE Limited et al v Golden Dynasty Enterprise Limited et al**⁸ and **Trade and Commerce Bank (Through Richard Fogerty, Its Joint Official Liquidator) v Island Point Properties S.A. et al**,⁹ by this Court, it remains the case that the inherent jurisdiction of the Court cannot be prayed in aid to flout a clear provision. In **Texan Management Limited et al v Pacific Electric Wire & Cable Company Limited**¹⁰ the Privy Council had this to say:

“... the modern tendency is to treat the inherent jurisdiction as inapplicable where it is inconsistent with the CPR, on the basis

¹² HCVAP 2011/041-052
HCVAP 2011/054-056.
HCVAP 2011/058-062 delivered on 4th October 2012.

that it would be wrong to exercise the inherent jurisdiction to adopt a different approach and arrive at a different outcome from that which would result from an application of the rules: **Raja v Van Hoogstraten** (No 9) [2008] EWCA Civ1444, [2009] 1 WLR 1143.

...

It was held that although the inherent jurisdiction may supplement rules of court, it cannot be used to lay down procedure which is contrary to or inconsistent with them, and therefore where the subject matter of an application is governed by the CPR it should be dealt with in accordance with them and not by exercising the court's inherent jurisdiction. (My emphasis)

I wish to adopt this approach and accordingly will decline an award for exemplary damages as the claimant has failed to plead and particularize the exemplary damages in the claim form as required by CPR 8.6(3).

[15] **Order**

1. The claimant is awarded the sum of \$7,000.00 for wrongful arrest, false imprisonment and assault and battery with interest at the rate of 5% from the date of judgment until the date of payment.
2. Prescribed costs in the sum of \$630.00 in accordance with CPR 65.5 (3) (4) (b)(ii)

Agnes Actie
Master