

GRENADA

**THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV 2006/0351

BETWEEN:

JUDE JACK

Claimant

AND

**THE ATTORNEY GENERAL
KENYO PIERRE**

Defendants

Appearances:

Dr. Francis Alexis, Q.C and Mr. Dwight Horsford for the Claimant
The Hon. Solicitor General for the Defendants

2010: September 15

JUDGMENT

- [1] **HENRY,J:** The claimant seeks damages for injuries sustained when he was allegedly shot by the second defendant, a police officer, in purported pursuance of his duties as a servant or agent of the Crown.
- [2] In his statement of claim, Mr. Jack alleges that about 5:30 p.m. on 26th February, 2006 he was at a public playing field at Paraclete, St. Andrew. A cricket match was in progress at the time. He was armed with a cutlass, since according to him, he was on his way to look after his animals. He avers that while at the playing field, one Patrick Bernard aka Patrick Noel aka 'Matches' armed with a knife, threatened him, and a scuffle ensued. While scuffling, a party of police officers, including Officer Raymond Charles and Earl Dunbar, arrived on the scene and told the two to stop scuffling and to drop their weapons. Mr. Jack states that the two ceased the scuffling and separated. He however, did not drop his

weapon, but states that he ran down a gully and up a hill, moving away from the officers and his alleged attacker.

- [4] According to Mr. Jack, he heard a person or persons saying stop and drop the weapon. He states that he however, continued running away. He asserts that he was being pursued by an ally of his attacker. He alleges that as he was running he was shot from behind in his right big toe by one of the officers. He continued to run up the hill while looking back over his shoulder to see who was shooting at him. He asserts that it was at this point he saw that second defendant take aim at him with a gun; he heard an explosion or noise and at once felt a lash or impact on his lower right back, which caused him to fall to the ground. Having fallen, he observed a fresh wound to his belly and blood flowing there from. He was able to feel a wound to the back.
- [4] According to Mr. Jack, as he lay on the ground police officers and others gathered around him and one officer violently brutally kicked him three times on the left shoulder; that it was only after a bystander shouted for them to take him to the hospital that Officer Charles instructed an officer to take him to the hospital. Mr. Jack asserts that he was shot by the second defendant while running away from the scuffle; that he was not at the time attacking anyone, nor fighting, or behaving erratically. He asserts that there is no justification for the shooting. He therefore seeks damages, including aggravating damages, interest and cost.
- [5] In the defence, the defendants deny the version of events as set out in the claim. Defendants contend that Mr. Jack was carrying a cutlass, an offensive weapon, without lawful authority or reasonable excuse and that this is a violation of section 5(i) of the Restriction of Offensive Weapons Act, Cap 288. They assert that it was Mr. Jack who violently attacked Mr. Noel with a cutlass, thereby causing him serious harm. They allege that Mr. Noel was bleeding profusely from several chops he had received from Mr. Jack and had to be removed to the hospital for treatment.
- [6] The defendants deny that Mr. Noel had a weapon or that police ordered him to put down a weapon. Instead, the defendants assert that it was Mr. Jack who was ordered to stop striking Mr. Noel and to put down his weapon, but that he refused to put down his weapon.

According to the allegations in the defence, even after several police officers discharged their weapons in the air, Mr. Jack refused to put down his weapon. The defendants rely on the admission by Mr. Jack that he was being ordered to stop and drop his weapon several times before he was shot by one of the persons pursuing him. Defendants assert that implicitly, by fleeing, Mr. Jack attempted to evade arrest. They allege he was very agitated and advanced toward several officers and members of the crowd with weapon in hand. He then ran with the weapon still in his hand.

[7] According to the allegations in the defence, at the time Mr. Jack ran, he had already committed a violent criminal act and was continuing to refuse to obey lawful orders to stop and to put down his weapon; that by running with the weapon in a place where members of the public were congregated, the claimant posed a significant danger to the persons around him. The defendants admitted that several police officers were pursuing Mr. Jack in an effort to apprehend him and to protect the members of the public from possible serious injuries, but state that they have no knowledge as to the averments in respect of the alleged shooting as contained in the statement of claim.

[3] According to the defendants, it is the illegal conduct of Mr. Jack which caused and/or significantly contributed to his injuries. The defence also seek to rely on section 59 of The Criminal Code Cap. 1.

THE ALLEGED INJURIES TO MR. JACK

[4] Mr. Jack alleges that:

1. He was shot in the toe by one of the officers.
2. He was shot in the back by the second defendant;
3. He was kicked three times on the left of his shoulder by unnamed officers.

[10] The action is brought against one named officer, Kenyo (Kenio) Pierre and the Attorney General who is named by virtue of the Crown Proceedings Act Cap 74. It is alleged that the Crown is liable for the tort committed by the second defendant, he being at all material times a servant or agent of the Crown.

[11] In regard to being shot in the toe, Mr. Jack admits that he does not know who shot him. In regard to being kicked after he was shot in the back, he states in this witness statement on falling to the ground, several persons, including police officers, gathered around me. As I lay on the ground bleeding, one of the officers violently and brutally kicked me three times on the left side of my shoulder.' No further identification of the person who kicked him is provided.

[12] With regard to being shot in the back by the second defendant, Mr. Jack states that having just been shot in the right big toe, he was running up the hill away from the ravine course and that he began looking back over his shoulder to see who was shooting at him; that as he looked back he saw the second defendant taking deliberate aim with a hand gun at him; that he then heard the explosion of a firearm discharging and felt the impact to his right lower back.

[13] In support of his assertion that it was the second defendant who inflicted a gunshot wound to the claimant's lower back, one Kenroy Phillip gave evidence that he saw more than one officer with a gun; he states that he saw Officer Raymond Charles with a gun and that the officer fired a shot in the air. At that time, Terrance alias "Tete" was racing Jude. He further states that there was another person standing with Officer Charles who also had a gun and that a couple seconds after, he saw Officer Pierre aiming a gun at Mr. Jack. He places Officer Pierre about 40 ft. from Officer Charles at the time. According to him, one of several shots came from the direction of Kenyo (Kenio) Pierre's gun at the time Mr. Jack fell to the ground.

[14] The witness Paul Lewis also identifies Officer Raymond Charles as one of the officers firing bullets in the air; he also states that Inspector Earl Dunbar also fired about three shots. He then states that Officer Kenyo (Kenio) Pierre fired three shots at Mr. Jack who was still running away and that the third shot hit Mr. Jack in his back.

[15] No ballistic tests were carried out to determine which gun fired the bullet that struck Mr. Jack.

- [16] Defendants admit that Mr. Jack sustained a wound, but makes no admission as to how he sustained the wound.
- [17] Both Officer Raymond Charles and Inspector Dunbar gave evidence. They both admitted that in an attempt to disarm Mr. Jack on their arrival on the scene, they had fired warning shots in the air. Officer Charles admitted firing at Mr. Jack's foot. This however was before Mr. Jack took off running. In cross-examination Officer Charles admitted that it was after he and Inspector Dunbar fired shots that Mr. Jack began to run; that he ran across the ravine and up a bank; that at that point he noticed no injury or anything resembling blood on Mr. Jack. Officer Charles admits that he and Inspector Dunbar were among the persons who gave chase, but that after Mr. Jack crossed the ravine he fired no further shots.
- [18] Inspector Dunbar's evidence is that after Mr. Jack crossed the ravine, he fired no further shots either. However, the Inspector stated that he did hear gun shots but that they were not from his weapon. His evidence is that he did not see the second defendant at that time.
- [19] Officer Pierre gave evidence in which he denied shooting Mr. Jack in the back or at all. His evidence is that he was at the cricket match at the Paraclete grounds. He saw Mr. Jack on the bank of the playing field. At the time, Mr. Jack was being approached by Officers Charles and Dunbar. Officer Pierre says he observed Mr. Jack run down the bank and towards the ravine. His evidence is that as Mr. Jack was running down the ravine and across it, he fired two shots into the air and that at some point he saw Mr. Jack collapse on the ground with the cutlass. It was put to him that he did not fire shots into the air that he took aim and fired at the body of Mr. Jack. He replied no. It was further put to him that he was not in a position to say that a bullet from his weapon did not injure Mr. Jack. His response was no.
- [20] The burden of proof is on the Claimant to prove on a balance probabilities that the defendant inflicted the injuries as alleged. I find that Mr. Jack has failed to prove that the named second defendant inflicted the injury to his toe or that he was one of the persons who kicked him in the shoulder. The claimant himself has submitted that after he was shot, the second defendant did not approach or go near to him. So the second defendant could not have been involved in kicking him.

- [21] With regard to the allegation that it was the second defendant who inflicted the gun shot wound to Mr. Jack's back, I accept the evidence of Officers Charles and Dunbar that they did not discharge their weapons after Mr. Jack ran down the ravine. Officer Pierre is the only officer who admits to discharging his weapon after Mr. Jack crossed the ravine. There were at least two eye-witnesses who say him discharge his weapon just before Mr. Jack collapsed with the wound to the back. The report from the hospital is that Mr. Jack sustained a bullet wound, but that the bullet did not enter the abdominal cavity. There is no evidence that any civilians had weapons; only police officers discharged their weapons on that afternoon. Even though no ballistic evidence was submitted, I find this aspect of the case proved. I find that the claimant has proved on a balance of probability that it was the second defendant who inflicted the gun shot wound to his back.

WAS THE SHOOTING JUSTIFIED?

- [22] Notwithstanding the above, the defendants submit that Office Pierre, under the circumstance that afternoon, was justified in discharging his weapon as he did. The defendants rely on Section 59(1) of the Criminal Code Cap. 1. That section provides:

"59. (1) Any person may, with or without warrant or other legal process, arrest and detain another person who has committed a felony, and may, if the other person, having notice or believing that he is accused of felony, avoids arrest by resistance or flight or escapes or endeavours to escape from custody, use any force which is necessary for his arrest, detention, or recapture, and may kill him, if he cannot by any means otherwise be arrested, detained or retaken."

- [23] Mr. Jack asserts that the defendants may not rely on section 59 since he did not commit a felony; that he had no notice or belief that he was accused of any felony, nor was he avoiding arrest, he never having been told that he was under arrest.
- [24] "Matches" asserts in his witness statement that he was planassed several times by Mr. Jack in addition to being chopped on the left elbow. At the time, he had no knife or other weapon. He further gave evidence that when Inspector Dunbar arrived, he spoke to the officer; that he was bawling and crying out for help; that he told the Officer 'you watching the man beat me like that with a cutlass and you not doing anything.' Several other witnesses also gave evidence that Mr. Jack did planass 'Matches' with the cutlass; that the police made several requests for him to put down the weapon but that he refused to do so.

[25] As a result of these events, Mr. Jack was charged with several summary offences including (a) unlawfully causing a wound to Patrick Noel alias 'Matches' (b) unlawfully causing harm to Patrick Noel alias 'Matches' and (c) possession of an offensive weapon. However, to date he has not been convicted of anything. So that, even though I accept the evidence that Mr. Jack did not planass 'Matches' and that 'Matches' sustained a laceration or wound to the elbow, it cannot be said that Mr. Jack had committed a felony at the material time. Mr. Jack also asserts that he had no notice nor did he believe that he was being accused of a felony.

[26] On the issue of arrest and escaping and resisting arrest. Counsel asserts that at no time was Mr. Jack informed that he was under arrest and therefore it was perfectly lawful for him to run. Whether a person has been arrested is a question of fact. It all depends on the circumstances of any particular case whether in fact it has been shown that a person has been arrested. As the court in **R v Inwood** [1973] 2 All ER 645 noted, no particular formula need be followed. There is no magic formula. No formula will suit every case and it may well be that different procedures might have to be followed with different persons depending on their age, ethnic origin, intellectual qualities, etc. There is however, the obligation to make it plain to the suspect, by what is said and done, that he is no longer a free man. Again in **Christie v Leachinsky** [1947] 1 All ER 567 Lord Simonds noted that there is no need for a constable to explain the reason of arrest if the arrested man is caught red-handed and the crime is patent to high heaven. Nor, obviously, is explanation a necessary prelude to arrest where it is important to secure a possibly violent criminal.

[27] In this case, even though the words 'you are under arrest' were never uttered by the police, I have no doubt that Mr. Jack very well knew that the police were trying to disarm him of the weapon and that his arrest would then be effect, and therefore he was no longer a free man. In any event, I do not think that determines the matter. The fact remains that at that point, Mr. Jack could only have reasonably been suspected of plannassing 'Matches' and/or possibly possession of an offensive weapon, none of which amounted to a felony. So the issue remains, was Officer Pierre justified in using deadly force in order to effect an arrest of a person suspected of committing a summary offence. Under the provision of section 60 of the Criminal Code, the answer is no.

[28] Furthermore, it appears to the court that all the parties hailed from the Parish of St. Andrew and knew one another. So that it cannot be said that there was no other means to arrest, detain or retake Mr. Jack. I do not accept that at the point he was shot that he posed a danger to the public. The evidence is clear that his confrontation with 'Matches' took place near the playing field where the cricket match was being played. I accept the evidence of Officers Charles and Dunbar that at that point, he was agitated and was waving the cutlass about hence, I believe, their complete focus on disarming him. But once he ran, he ran away from the crowds and away from the police. The evidence is clearly that there were no members of the public in front of him as he ran down the ravine and up the hill. At that point it was Mr. Jack who was being pursued. I would have to agree with the submission that the use of deadly force at this point was out of proportion to the danger, if any, that Mr. Jack posed. Clearly the action of Officer Pierre does not fall within the ambit of section 59 (1). I therefore find in claimant's favour.

DAMAGES

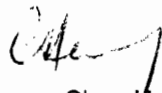
[29] The claimant claims both general and aggravated damages. I find no basis whatsoever for the award of aggravated damages.

[30] In regard to special damages, the evidence is that Mr. Jack is a butcher, who supplied several business places with meat. In the Claim Form filed 28th July, 2006, Mr. Jack claimed two months loss of Income at \$800.00 per week. However, by the time Mr. Jack gave evidence at trial, he testified that he now earns \$3,000.00 per weekend. Of course the relevant quote is what he earned in March-April 2006. I therefore award special damages as follows:

Loss of income for two months at the rate of \$800.00 per week	\$6,400.00
Transportation cost	1,100.00
Fees to Dr. Dominguez	150.00
Fees to General Hospital	229.00
Total special damages	7,879.00

General Damages

- [31] The wound Mr. Jack sustained was a flesh wound as described by the Doctor. Mr. Jack was admitted to General Hospital on 26th February, 2006, where surgery was performed the same day. He remained at the Hospital for two days. Dr. Dominguez states that his post-op was successful and he was sent home on 1st March, 2006. He was seen for follow-up on 8th March and given 5 weeks sick leave. Mr. Jack is therefore entitled to an award for pain and suffering. Much of the embarrassment and humiliation Mr. Jack claims he suffered were of his own making. I therefore award General Damages of \$15,000.00.
- [32] Accordingly, judgment is granted in favour of the claimant in the sum of \$22,879.00 plus interest at the rate of 6% per/annum from the date of the filing of the claim to date of judgment. Costs shall be prescribed costs.


Clare Henry
HIGH COURT JUDGE