

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

GRENADA

CLAIM NO. GDAHCV2018/0421

BETWEEN:

LYNDON ROBERTS

Claimant

and

[1] **GRENADA CO-OPERATIVE BANK LIMITED**
[2] **INSPECTOR 117 SHELDON THOMAS**
[3] **WPC 806 FRANCES MC LEAN**
[4] **THE ATTORNEY GENERAL OF GRENADA**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Nazim Burke for the Claimant

Mr. Adebayo Olowu for the Second to Fourth Defendants

2023: September 14th, 29th (submissions filed)
2024: November 19th

ASSESSMENT OF DAMAGES

- [1] **ACTIE, J.:** The matter comes on for an assessment of damages for malicious prosecution against the second to fourth defendants (hereafter referred to as “the defendants”) on filed submissions. The facts of the case are outlined in the judgment of the court delivered on 9th August 2023 and need not be repeated.
- [2] The claimant alleges that his credit, character and reputation have been greatly injured and he has suffered considerable public scorn, severe shock, mental pain, anguish, inconvenience, anxiety, torment and humiliation as result of the arrest

and malicious prosecution. He also alleges that his employment prospects have diminished. The claimant avers that he had never before been charged with a criminal offence, and that his prosecution received wide publicity.

- [3] The authors of **McGregor on Damages**¹ state the following with respect to damages for malicious prosecution:

“The principal head of damage here is to the fair fame of the plaintiff; the injury to his reputation. In addition, it would seem that he would recover for the injury to his feelings, i.e., for the indignity, humiliation and disgrace caused him by the fact of the charge being preferred against him. No breakdown however appears in the cases. Holt CJ’s second head was the damage by being put in danger of losing one’s life, limb or liberty. It therefore seems that the plaintiff can recover in respect of the risk of conviction: this is basically injury to feelings. If there has been an arrest, and imprisonment up to the hearing of the cause, damages in respect thereof should also be included and would be the same as would be recoverable in an action for false imprisonment.”

- [4] With respect to the reputation of the affected person, the Privy Council in **Terrence Calix v AG of Trinidad and Tobago**² through the judgment of Lord Kerr stated the following guiding principles:

“unjustified damage to reputation demands to be recognised irrespective of how an individual subjectively reacts to that damage... someone who suffers a severe adverse personal reaction to such damage may be awarded greater compensation than others who are more stoical about or indifferent to the affront of the slur... compensation should be adjusted to take account of the anguish that the reputational damage occasions.”

- [5] The Board also noted that though the complainant may not have been a high-ranking member of society, that does not mean that his reputation was of any less significance than that of those who were³.

- [6] The claimant seeks an award for loss of reputation damages in the sum \$60,000.00 and \$40,000.00 for the injury to the claimant’s feelings, making a total sum of \$100,000.00.

¹ 17th edn para 38-002

² [2013] UKPC 15

³ *Terrence Calix v AG of Trinidad and Tobago* [2013] UKPC 15

- [7] Mr. Nazim Burke, counsel for the claimant, relies on the evidence of Mr. Ralph Nahous who briefly employed the claimant as a salesman following his dismissal from the first defendant. Mr. Nahous recited occasions where he was approached and informed by members of the public that the claimant was “an old thief “who should not be working with [him]”.
- [8] Mr. Burke cites the case of **Dexter Smith v AG**⁴, where the claimant who was an employee of LIAT, was arrested on charges of possession of a controlled drug, importation of a controlled drug and trafficking of a controlled drug. His trial did not conclude in the magistrate’s case until December 2007. The claimant was suspended from his job without pay from 9th December 2004 to December 2007. His insurance policy lapsed, and he lost his property. He alleged that he suffered injury to his reputation and livelihood as a result of the charges brought against him. The court in 2010 awarded the sum of \$40,000.00 for malicious prosecution.
- [9] Mr. Adeybayo Olowu, counsel for the defendants, argues that the sum of \$100,000.00 is excessive as the claimant is seeking an award under two heads and suggests an award in the sum of \$25,000.00. The defendants contend that the claimant unlike the case of **Dexter Smith**, was not suspended because the charges were laid by the defendants but was dismissed by the first defendant in 2013 for infractions against the rules of the first defendant. The defendants also contend that any loss was due to the claimant’s dismissal by the first defendant.
- [10] The defendants on the other hand rely on the case of **Danny Ambo v Michael Laudat et al**⁵, where Master Lanns in 2011 awarded the sum of \$50,000.00 for malicious prosecution. The claimant in that case was prosecuted for the offence of murder, however the charge was withdrawn after he had been incarcerated for 93 days and 5 hours. A further charge of conspiracy to commit murder was dismissed by the court some 5 days later after the prosecution offered no evidence.

⁴ GDAHCV2018/0328

⁵ DOMHCV2010/0030

- [11] The court accepts that the claimant was denied the freedom to leave and re-enter the jurisdiction while on bail. This is despite the surrendering of his passport not being a condition of his bail. It is the evidence that on 10th April 2015 the claimant while travelling to Trinidad and Tobago was approached by two immigration officers who subjected him to a line of questioning regarding his criminal charges. On his return from Trinidad and Tobago, he was also apprehended and made to wait. On a further occasion in September 2015, after the criminal charges against him had been discontinued, the claimant was again apprehended and questioned on his departure from and arrival to the jurisdiction.
- [12] It is evident that the claimant as a bank teller experienced indignity, humiliation, injury to his reputation and feelings which in turn affected his job prospects. The court agrees with counsel for the claimant that there was wide publicity of the claimant's arrest and prosecution. However, the circumstances of this case can be distinguished from **Danny Ambo** as there was no incarceration during the period between the charge and discontinuance of proceedings to justify an award in excess of the award of \$50,000.00 made in 2011. The court takes judicial notice of the fact that the charge is on a lesser end of the scale especially when considered with the gravity of the charge in **Danny Ambo's** case.
- [13] The court in its own research noted the facts in **Tivonne Bryant v AG**⁶ where the claimant was charged with a drug related offence and taken before the Magistrate's Court on 18th June 2018. The Magistrate refused to admit the claimant to bail. Bail was eventually granted by the High Court on 12th July 2018 after a period of 28 days in custody. The claimant was employed as a Port Constable and was initially suspended from his employment until he was reinstated on 30th April 2019. On 26th January 2020, the prosecution withdrew all of the charges against the claimant. The court in 2022 held that the claimant was entitled to damages for malicious prosecution and was awarded the sum of \$7,500.00 as damages to reputation.
- [14] The court in making the appropriate award takes all the facts and authorities into consideration and the awards made in the cases cited. The court accepts that the

⁶ NEVHCV2021/0011

claimant was dismissed prior to the charge and that he was not incarcerated. , The court however takes into consideration the further embarrassments faced by the claimant at the airport even after the charge was discontinued and is of the view that the lumpsum figure of \$25,000.00 suggested by the defendants for loss of reputation and injury to feelings suffered is reasonable in the circumstances and awards the said sum. ds.

Pre-Judgment Interest

[15] Counsel for the claimant submits that the court should exercise its discretion to grant the claimant pre-judgment interest. It is settled law that the Court has the discretion to award interest on damages to a claimant from the date of the loss to the date of judgment⁷.

[16] **Section 27 of the West Indies Associated States Supreme Court (Grenada) Act CAP 336** provides that:

“In any proceedings for the recovery of any debt or damages, in the High Court or the Court of Appeal, the Court may, if it thinks fit, order that there shall be included in the sum for which judgement is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgement...”

[17] In the case of **Wakeem Guishard v AG**⁸ it was held that pre-judgment interest is awarded on loss or damages already incurred at the time of filing the claim and must relate back to the time the cause of action arose.

[18] Counsel for the defendants submits that the claimant has not claimed loss or damage incurred at the time of filing the claim and accordingly is not entitled to pre-judgment interest. However, Farara JA (Ag.) in **Wakeem Guishard v AG**⁹, propounded that:

“....., the damages awarded for wrongful detention, false imprisonment and malicious prosecution relate to the period of the wrongful detention of the appellant, that is, before filing his claim, and not to any future loss or damage to be incurred and in respect of which he is to receive an advanced award.”

⁷ Steadroy Matthews v Garna O'neal BVIHCVAP2015/0019

⁸ BVIHCVAP2018/0006 para 84

⁹ BVIHCVAP2018/0006 para 84

[19] The claimant was arrested, charged and released on 30th April 2014, The charge was eventually discontinued in 2015. Accordingly, I will award pre-judgment interest of 3% per annum on the total award of damages from the date of the charge was initiated in April 2014.

Conclusion

[20] It is ordered and directed as follows.

- (1) General damages for malicious prosecution in the sum of \$25,000.00 with interest at the rate of 3% per annum from 30th April 2014 to the date of judgment on 9th August 2023 and at the rate of 6% per annum from date of judgment until payment in full;
- (2) Prescribed costs in the sum of \$5,000.00 to be paid by 4th Defendant within thirty (30) days of today's date. .

Agnes Actie
High Court Judge

By the Court

Registrar