

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2021/0021

BETWEEN:

ITAMBA KAMANNE ADAMS

Claimant

And

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. Sherfield Bowen for the Claimant

Ms. Joy Dublin of the Attorney General's Chambers for the Defendant

2024: May 7th;
June 10th

JUDGMENT

[1] **BYER, J.:** The Covid-19 Pandemic was the most disruptive and societal changing event that this world had seen since the end of World War II in 1945. The islands in this region were no less effected and each island state made provision for dealing with the panic and the disruption from enforcing extended lock downs, to task forces patrolling the city streets to ensure that public health and safety were maintained while allowing for commercial activities to continue, to curfews and in some extreme instances, arrests.

[2] Antigua was no different and this case at bar, was one that resulted from, what this court would consider was the zealous and intense scrutiny that citizens were subject to, as a means to ensure that exposure and the rampant spread of the Covid-19 virus was maintained within manageable levels.

- [3] Thus on the 25th September 2020, at the height of the pandemic the claimant and one Sergeant Norris Derrick(Sgt Derrick) came into contact for the first time under the most unfortunate of circumstances.

Background

- [4] On the 25th September 2020 the claimant was plying his trade as a vendor in the heart of St John at Market Street when he was approached by a police officer dressed in uniform, Sgt Derrick, attached to the Covid-19 Compliance Team as (stated at trial of the matter) the officer in charge of the patrol team. Sgt Derrick's complaint was that the claimant was observed not wearing a mask in a public place.
- [5] The claimant was arrested and removed from where he had been standing after his initial (in his own words) hesitation to leave with the said Sgt Derrick. Indeed it was clear to the court that the said claimant made no apology for having held onto the fence surrounding the area that he was found, refusing to enter the vehicle with Sgt Derrick and his fellow patrol officers, two members of the Antigua and Barbuda Defence Force.
- [6] The claimant maintained that when he was approached by Sgt Derrick, he gave him a reason as to why he had not been wearing his mask at the time that he was sighted, allegedly indicating that it had become sweaty from being worn all day and that further he was in the process of consuming a beverage. However Sgt Derrick on the stand, claimed that no explanation had been given to him and in those circumstances he arrested the claimant for being in contravention of the Covid Protocols and transported him to the National Office of Disaster Services(NODS) where the compliance team had its headquarters.
- [7] At this juncture the recollection as to the sequence of events as between the claimant and the said Sgt Derrick diverge substantially. The claimant's consistent allegation was that Sgt Derrick after effecting the arrest, while transporting him to NODS beat him continuously (which was demonstrated to the court when asked) ¹. Further the claimant stated that the said Sgt Derrick at arrival at NODS dragged him from the vehicle and severely beat kick,dragged him about by his hair,and beat him "about his body and soul for more than 30 minutes".²
- [8] Sgt Derrick denied that any such thing occurred as between himself and the claimant but he was unable to account for a period of some 40 minutes before he left NODS with the claimant and took him to the St John 's Police Station where the claimant was stated to have arrived at 330pm in the official station diary. However notably Sgt Derrick at trial did admit that he took no statement from the claimant at NODS nor did he do any official act with the arrest of the Claimant while at NODS as the claimant refused to give his name, another fact which the claimant admitted to at trial.

¹ The claimant alleged that the said Sgt Derrick while driving raised his hand from the front of the vehicle and hit out at the claimant who was sitting in between the two other team members

² Paragraph 9 of the Statement of claim filed 18/1/2021

- [9] Once the claimant was received into custody at the St John's Police station he was then transported to the Mount St John's Medical Centre where he received medical attention and was discharged.
- [10] The claimant was subsequently charged with five offences which were dismissed at the Magistrate's court.³
- [11] Having considered the evidence this court is of the opinion that this matter must be determined based on who does the court believe. When this court therefore considers the evidence, this court finds that it prefers the version of events as given by the claimant, save and except what this court considers a gross exaggeration of the physical assault that took place against him, even with his rider that "the police know what they are doing when they beat someone."⁴
- [12] Indeed this court did not find Sgt Derrick a credible witness as to his version of the incident. This is especially so when this court must consider that in 2020, the extent of the pandemic had gripped the world in fear and that Sgt Derrick candidly admitted to the court that he was serious about his job. The calmness with which he stated he dealt with the claimant was incredulous when this court noted with some consternation the shadow of arrogance from him as he answered questions in cross examination and from the court.
- [13] Therefore the court finds on a balance of probability the following facts:
- i) Given that Sgt Derrick admitted to the court on being questioned that he took his job very seriously and that he believed that an individual who did not wear their mask in a public place was a danger to the public, I find that he would have been very zealous and vigilant in carrying out his task and that he approached the claimant both belligerently and unprepared to listen to any explanation that may have been proffered for the non wearing of the mask;
 - ii) That the claimant offended by the manner in which the police officer approached him, and believing to be fully justified that he had a reason for not wearing his mask, refused to co operate with any lawful directive given to him by Sgt Derrick including to enter the police transport or provide his name;
 - iii) That Sgt Derrick irritated by this lack of compliance to his authority did exert physical coercion and assault on the claimant to enter the police vehicle and then later at NODS but not to the extent alleged by the claimant to include, kicking, dragging or punching.
 - iv) That the unexplained length of time between the initial arrest of the claimant in St John to when he was delivered to the station in St John's further evidenced that an incident occurred between the claimant and Sgt Derrick which amounted to more than mere delay

³ The said charges were laid against the claimant some five months after the incident a fact not disputed by Sgt Derrick who intimated that the claimant could not be found

⁴ Response by the claimant to a question from counsel for the defendant when asked if he was beaten so severely as alleged how were his injuries that he admitted he received were so minimal in comparison,

v) That the claimant suffered injuries as identified while giving evidence to the court and that these injuries were from his interaction with Sgt Derrick alone.

Courts Analysis and Considerations

- [14] Having made those findings of fact this court is therefore fortified in making a finding in favour of the claimant, that he was the victim of an assault and battery by Sgt Derrick as a servant of the state. However before I proceed to consider what if any damages he may be entitled to in that regard, I wish to deal with some matters that were raised in the submissions of both parties and in particular the defendant.
- [15] The claimant pleaded in his claim form ⁵ unlawful arrest, false imprisonment, police brutality, abuse of process, abuse of office, personal injuries and assault and battery. However on the other hand, in the witness statement of the claimant ⁶ there was no mention by the claimant as to any other matter save and except the claimed assault and battery by Sgt Derrick. Additionally the claimant made no submission on the same and identified in his submissions as the sole issue as to whether the defendant was liable for assault and battery and the extent of the damages that would be due to the claimant.
- [16] In this court's mind it is therefore clear that the claimant has abandoned his claims for any other remedy claimed save assault and battery, including whether the arrest was unlawful, a point responded to by the defendant in their submissions.
- [17] This court cannot presume that the claimant maintains his claim when he makes attempt to pursue claims contained in a claim form and certainly including a pleading without more cannot be sufficient for a court to determine the same. Thus this court dismisses the prayers sought in the claim of the claimant seeking damages for a multitude of wrongs alleged to have been inflicted on the claimant arising out of the incident on the 25th September 2020 save and except the damages for assault and battery and whether having made a finding of liability the claimant is also entitled to aggravated and exemplary damages.
- [18] Finally before I embark on that exercise I also wish to deal with an issue raised by the defendant in submissions as to the failure of the claimant to attach the medical report that he was seeking to rely on to his claim form as required by Part 8.10 CPR 2023.
- [19] Under Part 8.10 (3) it clearly states that " if the claimant intends to rely at trial on the evidence of a medical practitioner, the claimant **must** attach to the statement of claim a report from the medical practitioner on the personal injuries alleged in the claim." On the face of it, this rule does appear as a mandatory requirement on the part of the claimant who is seeking to rely on medical evidence to support the claim for personal injuries but the rule does not state that where the claimant fails to do so he can lead no evidence on injuries suffered. Indeed, at subparagraph (5) it is clearly stated that what is contained in subparagraph (3) does not restrict the right of the claimant to call *other* or *additional* medical evidence at the trial of the claim.

⁵ Filed 18/1/2021

⁶ Filed 27/2/2023

[20] In my mind this therefore does not ,as the defendants have submitted, mean that the claimant who does not attach his medical evidence is incapable of proving personal injuries at all before the court. Rather this court can consider if there was in fact injury to the claimant , and once that is proven to the satisfaction of the court, the failure to adduce as required under the rules of court the substantiating medical evidence should only therefore go to quantum, not to whether any injuries occurred at all.

[21] This proposition was affirmed by the Privy Council in the case of **Bergan v Evans** ⁷ where the Judicial Committee although not determining the failure to adhere to Part 8.10 CPR (then 8.9 CPR 2000) still spoke to the rationale behind the requirement to attach the medical reports and had this to say, “ the clear purpose of these provisions which impose front- loading burdens on claimants...in personal injury cases is to require the parties at the earliest stage before the court undertakes detailed case management to flesh out the detail of the dispute if any about the extent of the claimant’s injuries rather than to leave the ambit of that dispute to emerge as the case proceeds towards trial or even to appear for the first time during cross examination...medical evidence may be relevant not only as to the extent of personal injuries but as to the causes of them and those issues frequently form a central part of the issues for determination at any trial.” ⁸

[22] It is therefore clear in this court’s mind,as stated that the failure in the case at bar does not go to whether injuries occurred,as I have found as a fact that the claimant did suffer injury . This issue is further complicated however by the fact that at a further pre trial hearing of this matter before this court as presently constituted the defendant agreed to the medical form handed to the claimant at the police station on the 25th September 2020 as an agreed document for the purposes of the trial. Thus although it may not have been attached to the claim form, this court accepts that it was evidence to which this court can refer. I will do so in the assessment exercise which now follows.

Assessment of Damages

[23] This court having determined that the claimant was in fact unlawfully assaulted and battered by Sgt Derrick, sees no utility in restating the law in relation to what must be proven on a claim of assault and battery.

[24] It is trite law that general damages are compensatory in nature. As such damages awarded should reflect the court’s disapproval at what transpired. In this regard this court was not at all assisted by the claimant . He did not purport to suggest a sum that would be fair in the circumstances of the case and once again left it at the door of the court to consider without assistance, a trait which unfortunately seems to be rampant in this jurisdiction.

⁷ [2019]UKPC 33

⁸ Ibid at paragraph 27

[25] Be that as it may, this court in doing its own consideration found several authorities from this court's jurisdiction in which a similar fact pattern had occurred to the case at bar.

Keiran Charles v Mervin Steel⁹ – the court awarded on a claim for assault, battery and false imprisonment the sum of \$5000.00 (no injuries were specified – simply stated as not serious)

Cian Alexander v The Attorney General ¹⁰– the court awarded the sum of \$7000.00 where the claimant had been struck on her nose causing bleeding and detained for several hours

Royal George v The Attorney General of the Commonwealth of Dominica¹¹ – the court awarded \$5000.00 for false imprisonment, assault and battery (no injuries specified – simply stated that they were slight)

Danny Edwidge v The Attorney General of St Lucia¹² – the court awarded the sum of \$7000.00 for assault and battery where the police officers who executed the assault broke the claimant's thumb and caused lesions on his arm

[26] This court accepts that the claimant's injuries that he suffered were slight, being namely, scratches to his inner arms and the side of his neck and an unspecified pain to his chest.

[27] However, whatever the quantum of damages that I am minded to award this court must also consider whether those damages should have any uplift for the consideration of what may have constituted aggravating features of the assault.

[28] **In the Commissioner of Police of the Metropolis v Shaw** ¹³ the court made it clear that aggravated damages are compensatory in nature and not punitive. They identified that the features that may attract an award of aggravated damages may fall under three heads a) the manner in which the tort was committed b) the motive for it and c) the defendant's conduct subsequent to the tort but in relation to it. " These features affect the award of compensation because they aggravate the distress caused by the actual wrongful act." ¹⁴ It is therefore clear that the overlap between the scope for general damages and aggravated damages makes it essential that there is a careful consideration to ensure that there is no overlap or double recovery.

[29] Aggravated damages can therefore only be awarded where the evidence clearly establishes that the manner in which the action taken by the defendant falls within one of the heads as stated. Once again the court was not assisted by the claimant to identify what they relied upon for the claim of aggravated damages . However this court has already made the finding that Sgt Derrick's arrest on the day of the incident

⁹ SLUHCV2006/0247

¹⁰ SVGHCV 2006/0150

¹¹ DOMHCV2014/0021

¹² SLUHCV2018/0271

¹³ [2012] ICR 464 at para 16

¹⁴ **Dolette Cyr Bartholomew and anr v Kenton Hazzard and ors** GDAHCVAP2021/0020 per Baptiste JA

were carried out in a manner in which he would have caused upset and outrage to the Claimant and in that regard I therefore award as a global compensatory sum to the claimant of \$7000.00.

[30] Exemplary damages however are of a different ilk and are meant to punish the defendant and to deter him from similar behaviour in the future.¹⁵ However, the one important issue which the claimant did not address was that the same must be specifically pleaded.¹⁶ No where in the statement of claim or the claim of the claimant does he make a claim for exemplary damages and as such the court is not in a position to award the same.

Special Damages

[31] It has been quite clear in all the jurisprudence on this point that special damages must be specifically pleaded and proven with specific particularity.¹⁷

[32] It was quite clear at trial that the sums claimed by the claimant as special damages, that he had no evidence to substantiate the same. Indeed in relation to the medical expenses and transportation, when the claimant was questioned as to if he paid the hospital he scoffed at the thought that he would have to make any payment at a public hospital and could not even identify what transportation he may have paid. In relation to loss of personal property, the claimant admitted that he had made no claim to the police that he had lost any of his goods that he had on his person on the day of the arrest and could not particularize or identify any personal item of his that he lost. Finally with regard to the loss of economic opportunity the claimant provided no information on his earnings nor did he provide any evidence of any nature as to what he may have earned on any given day to substantiate his claim for loss of economic opportunity.

[33] This court therefore dismisses his claim for special damages as pleaded.

The order of the court is therefore as follows

1. The claimant's case contained at paragraph 1(ii) to (xix) and (xxi) to (xxiv) are dismissed but the claimant is successful in his claim for assault and battery only.
2. Damages are assessed to the claimant on the claim of assault and battery in the sum of \$7000.00 for personal injuries taking into account an uplift for aggravated damages
3. No order made as to exemplary damages
4. The claim for special damages is dismissed
5. Interest on the said \$7000.00 at the statutory rate from the date of this judgment to payment
6. Costs to the Claimant on the said sum of \$7000.00 pursuant to Part 65.5(1) Appendix B CPR 2023

¹⁵ **Takitota v Attorney General** [2009] UKPC 11

¹⁶ Halsbury's Law of England Vol 29 (2019) para 325

¹⁷ **Dolette Cyr Bartholomew** Supra at para 42

Nicola Byer
High Court Judge



By the Court

Registrar