

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO.: ANUHCV2017/0468

BETWEEN:

WASHINGTON MANUEL BRAMBLE

Claimant

And

ATTORNEY GENERAL

Defendant

APPEARANCES:

The Claimant unrepresented by Counsel
Ms Joy Dublin, Crown Counsel for the Defendant

2020: November 23rd
December 18 (claimant's written closing submissions)
2021: January 20 (defendant's written closing submissions)
2022: December 16th

JUDGMENT

- [1] **PHILLIP, J:** On 22nd September 2017, the claimant filed a claim against the Chief Magistrate, the Attorney General, the Commissioner of Police, and the Superintendent of Prisons for unlawful imprisonment by the Chief Magistrate on 27th March 2013. The claimant is seeking damages, exemplary damages, aggravated damages, court costs, legal costs, refund of compensation ordered, interest and such other relief the court deems fit. By order dated 6th November 2018, the court removed the Chief Magistrate, the Commissioner of Police, and the Superintendent of Prisons as parties.
- [2] The claimant's allegation of unlawful imprisonment by the Chief Magistrate has its genesis in a malicious damage to property charge brought against the claimant and the claimant's assertion of prejudice or bias by the Chief Magistrate because of his sexual identity.

The Claimant's Case

- [3] The claimant's pleaded case is that he is a professional citizen of Antigua and Barbuda. He was arrested and charged before the Chief Magistrate with malicious damage, contrary to section 44 of the Malicious Damage Act, Cap. 258 of the Laws of Antigua and Barbuda. He was denied a fair and impartial trial, discriminated against, and denied his fundamental right to a fair and impartial trial.
- [4] The claimant avers that during the trial of the said criminal charges, the Chief Magistrate made disparaging and malicious remarks about his sexual identity. He is an open member of the Lesbian, Gay, Bi-sexual, and Transgender (LGBT) community, who was born as a male but has transitioned into an identity as a female. The constitution of Antigua and Barbuda grants the claimant protection from discrimination based on his sexual identity. The Chief Magistrate had previously stated to the claimant that she does not like persons from the LGBT community.
- [5] The Chief Magistrate falsely accused the claimant of making derogatory remarks about her on Facebook and remanded the claimant to prison for seven days after finding the claimant guilty of the said charge. Instead of delivering a sentence on that day, the Chief Magistrate said she needed a week to 'cool off'. The Chief Magistrate sentenced the claimant to pay compensation of \$456.00 after he had been in prison for seven days.
- [6] The claimant appealed to the Court of Appeals against his conviction because the Chief Magistrate was personally interested in the case, and she acted corruptly. Hence he did not receive a fair trial and could not express himself freely and give evidence freely. The claimant was embarrassed and humiliated by the Chief Magistrate's comments in open court during the trial, made to humiliate him. The Court of Appeal heard the appeal on 1st March 2017 and found that the Chief Magistrate's revocation of the claimant's bail was arbitrary. They were not satisfied that the claimant received a fair trial and called the decision by the Chief Magistrate 'unsafe'. Hence they allowed the claimant's appeal against conviction and sentence.
- [7] The claimant further asserts that being a transgender individual, the Chief Magistrate knew that being sent to prison would particularly cause him undue hardship, distress and suffering. It would endanger his life on account of his gender identity.

[8] By way of particulars of malice and distress, the claimant pleaded the following derogatory remarks by the Chief Magistrate:

- (1) On his first appearance in court, the claimant pleaded not guilty to the offence. An Attorney-at-Law represented him at the time during the trial.
- (2) During the hearing, the claimant's attorney-at-law asked that the claimant be granted reasonable bail on his own recognisance since the court did not know the claimant and because he was an upstanding citizen in society.
- (3) The Chief Magistrate responded sarcastically to this statement by the attorney, "Is that so?" implying that the claimant was not an upstanding citizen.
- (4) The claimant had a previous involvement with the Chief Magistrate when she worked in the office of the DPP. The Chief Magistrate was assigned to represent the claimant in a matter where he was the virtual complainant. Pierre Tucker was the defendant charged with attempting to murder the claimant.
- (5) The Chief Magistrate, then a Crown Counsel in the DPP's office, met with the claimant and commented on the claimant's gender identity.
- (6) The Chief Magistrate told the claimant that he should "dress like a man". She told the claimant that she would not represent him if he did not take out his braids before he went before the judge. As a consequence of her apparent hostility to the claimant's gender identity, he was represented by Adelaide Smith, another Crown Counsel in the DPP "s office.
- (7) On 2nd December 2012, when the claimant appeared before Chief Magistrate to plea to the Malicious Damage charge, the Chief Magistrate made a statement to imply that he was not of good character.
- (8) On 21st April 2013, the day the Chief Magistrate heard testimony on the matter, while the witness Kevin Beck, was on the stand, the Chief Magistrate made the statement to Kevin Beck. "If I were you, Mr Bramble would not be standing over there". The claimant perceived this statement as inciting violence against him because of his gender identity.
- (9) In addition, the Chief Magistrate was very antagonistic against the claimant throughout the hearing. The Chief Magistrate heard a recording of the claimant's voice and the voice of one of the witnesses, Kevin Beck, where he admitted to being in an intimate relationship with the claimant. The claimant believes this also antagonised the Chief

Magistrate because she asked the rhetorical question, “what kind of person would make a tape like that”.

- (10) The claimant had never encountered or interacted with the Chief Magistrate before when Pierre Tucker tried to murder the claimant and was charged with attempted murder.

[9] The claimant also pleaded particular of the aggravating features of the prison:

- (1) On the day the Chief Magistrate remanded the claimant to prison, he collapsed on the ground while being escorted to the bus. The claimant was then dragged by three police officers onto the bus and thrown onto the floor. The claimant collapsed because he faced real anxiety and fear of being remanded to prison.
- (2) The police guards and prisoners on the bus subjected the claimant to degrading comments because of his gender identity.
- (3) When the claimant arrived at the prison, a male prison officer strip-searched him. Other male prison officers stood around the claimant. They chanted very demeaning slurs while he undressed.
- (4) One shouted, “Make ar we see if a bud or pork you hab!”
- (5) Another one said, “Na lap un between your legs, mek ar we see um!”
- (6) The claimant received death threats as he walked through the corridor to a cell in maximum security.
- (7) One inmate shouted, “Bring the antiman in ya, mek ar you find he dead a morning”.
- (8) Another exclaimed, “Ar we go stick broom tick up in ya bottom!”
- (9) Prisoners threw urine on the claimant as the prison officer escorted him to the shower.
- (10) The claimant was forced to shower in the view of men looking from upstairs.
- (11) The prison authority called a barber, and the claimant received a haircut by force. The claimant had ten inches of hair, which was shaved bald.
- (12) The prison officer told the claimant that the Chief Magistrate wanted him to look like a man when the claimant returned to court the following week.
- (13) The seven days the claimant spent in prison were very distressing, as he constantly feared for his life and personal safety.

- [10] The claimant was the only witness in support of his claim. His witness statement essentially parrots his pleaded case. Still, under cross-examination, the claimant indicated he was granted bail during the trial, and the Chief Magistrate convicted him of the charge. His bail was revoked in the same session when he was convicted and remanded pending sentencing. The claimant asserted he could not apply for bail pending sentencing because his lawyer would speak for him. He supposed it was his lawyer's fault that he did not apply for bail pending sentencing.
- [11] The claimant admitted that a female officer searched him when he arrived at the prison. He was placed in the maximum section alone in a cell and was always escorted by a prison officer when he left the cell. He agreed that the prison officer should have been aware of the liquid being thrown at him because it also dosed the officer with him. Still, he states they are hiding the fact that it happened and disagreed that the prisoners threw no liquid at him. He also disagreed that the prison officers made no remarks.
- [12] Further, the claimant indicated that he was kept in the cell for almost 24 hours and had no interactions with the general prison population. He accepted that his schedule was such that he would not interact with the general prison population. Still, there were verbal attacks because the cells were very close, and he had to pass the cells when he went to shower.
- [13] The claimant received a haircut but could not recall exactly when, whether it was the same day or two days after he arrived at the prison. He acknowledged that he was wearing a sewn-on weave when he arrived at the prison, which did not need any maintenance. He indicated he would have taken the weave out and burned it. The weave was not the problem – his hair was the problem. Still, he never decided to take out the weave. It was the command of the prison officer Beggs that his hair was cut.
- [14] The claimant accepted that the Court of Appeal believed there was sufficient evidence for the Chief Magistrate to have convicted him. Also, they did not say that the remand or the bail revocation was unlawful, but he stated this was so because those issues were not before them. He maintained that the Court of Appeal said the conviction was unsafe, which means the same thing as unlawful.

The Defendant's Case

- [15] On 16th November 2017, the defendant filed a defence in defence of the claim and called at the trial four witnesses: Chief Magistrate Jo-Ann Walsh, Prison Officer Helene DeSilva, Police Corporal 554 Shane Charles, and Principal Prison Officer Grant Beggs.
- [16] In the defence, the defendant contends that the claimant had a fair and impartial trial of the criminal charge laid against him and put him to strict proof of his assertions. The claimant had legal representation to put his defence before the court. He was allowed to cross-examine all the prosecution witnesses who gave evidence and to call witnesses in support of his defence.
- [17] The defendant denied that the Chief Magistrate disparaged and made malicious remarks about the claimant's sexual identity or falsely accused him of making derogatory remarks about her on Facebook. The defendant asserts the Chief Magistrate, having convicted the claimant of malicious damage in exercising her discretionary power, sent him to prison for seven days pending sentencing. It was to determine a fair and appropriate sentence and nothing more. The defendant denied that the claimant was remanded to prison pending sentencing to punish him for his purported Facebook posts or otherwise.
- [18] The Chief Magistrate has no personal knowledge and cannot comment as to the claimant's gender status - biological, transitional or otherwise. He must provide strict proof of his assertions thereof.
- [19] The defendant admitted that the Chief Magistrate sentenced the defendant to pay compensation of \$456.00 and that the Antigua and Barbuda constitution protects against discrimination on the grounds of sexual identity. Still, the Chief Magistrate denied she had previously stated to the claimant that she does not like persons from the LGBT community. The Chief Magistrate has no personal knowledge of the claimant's affiliation with LGBT or otherwise.
- [20] The defendant also admitted that the Court of Appeal, in its ruling on 1st March 2017, set aside the claimant's conviction and sentence for the charge of malicious damage. Still, there was nothing in the ruling of the Court of Appeal which spoke to the issue of revocation of bail or that the Chief Magistrate was personally interested in the case and acted corruptly, so the claimant did not receive a fair trial and could not express himself freely and give evidence freely. The defendant denied that

the Chief Magistrate embarrassed and humiliated the claimant with her comments in open court during the trial.

- [21] The Chief Magistrate could not comment on what the learned Director of Public Prosecution (“DPP”) allegedly said and did at the Court of Appeal hearing nor on the claimant’s transgender status, as she has no personal knowledge of the same. She is unaware of any particularly undue hardship, distress or suffering, and the endangerment to the claimant. The claimant is to provide strict proof of the same.
- [22] Regarding the particulars of malice and distress, the Chief Magistrate denied responding sarcastically to the claimant’s counsel’s submissions for bail or making any comments as alleged or at all. She granted the claimant bail. The Chief Magistrate admitted being once employed as crown counsel in the DPP’s office but denied being assigned or otherwise involved in the Pierre Tucker case. The matter was assigned to another crown counsel, Adlai Smith, who at all material times had sole conduct of the case. She never met or had any involvement or interaction with the claimant before appearing in the Magistrate Court on a charge of malicious damage.
- [23] Further, the defendant averred that the Chief Magistrate conducted the claimant’s case professionally and addressed the claimant only through his counsel. The Chief Magistrate denied having any verbal exchange with the witnesses or the claimant, as alleged, and or having heard any voice recordings of the claimant and the witness, as she did not allow the playing of any voice recordings into the evidence.
- [24] Similarly, the defendant denied the particulars of the aggravating features of the prison and put the claimant to strict proof of the allegations made. However, for reasons that will become apparent later in the judgement, I do not propose to describe the nature of these denials in detail.
- [25] The defendant, therefore, contends he is not liable to the claimant in damages, and the court should dismiss the claim with costs to the defendant.

Issues for Determination

[26] The following are the issues arising by the claimant in the pretrial memorandum for determination:

- (1) Did the Chief Magistrate act illegally to imprison the claimant for one week?
- (2) Did the Chief Magistrate use a false premise to revoke bail?
- (3) Did the Chief Magistrate deliver a correct verdict in finding the claimant guilty of malicious damage?
- (4) Was the Chief Magistrate guided by prejudice against transgender people when she, in effect, fined and confined the claimant?
- (5) Did the prison officer act lawfully when he ordered a prisoner to cut the claimant's hair?
- (6) Was the claimant's human rights violated when the prison officer ordered a prisoner to cut the claimant's hair?
- (7) Was the claimant legally entitled to identify as the gender of the claimant's choice while imprisoned? If so, was this right violated?
- (8) How much compensation is owed to the claimant for the violation of human rights and false imprisonment?

[27] The issue raised by the claimant in (3) above is not one within the jurisdiction of this court. Indeed, the claimant has previously appropriately raised it in the Court of Appeal. Further, a perusal of the claimant's case indicates that the issues in (5), (6) and (7) above of violating the claimant's human rights or other rights were not pleaded nor contended. The claimant has not asserted which human rights or other rights were breached, nor has he set out the material facts that establish the violation of any such rights. Thus, there is no reasonable basis for bringing those claims. The law is settled¹ that a claimant must comply with the CPR 2000 (as amended) in setting out their case. Failure to do so cannot be cured by merely including it as an issue in the pretrial memorandum. Indeed, in **George Knowles v Elaine Knowles**², Barrow, JA opined (para [13]) that even where the other side did not raise the issue (as in this case),

"it cannot be a satisfactory situation that one case is 'pleaded' and the judgment is pronounced on a different case. The judgment shows the embarrassment that this situation caused. The Statement of Claim should either have been amended or, if it was too late to amend, the claimant should have been confined to the case contained in the Statement of Claim."

¹ Gaston Browne v AG Antigua and Barbuda et al, Antigua and Barbuda HCVAP 2009/024 (delivered 13th August 2010)

² Antigua and Barbuda Civil Appeal No.17 of 2005 (delivered 18th September 2006)

- [28] Similarly, the issues raised at (1), (2) and (4) are in the tone and tenor of judicial review proceedings. Still, the claimant does not allege nor purport to claim judicial review reliefs. Indeed, the claim form express states it is for damages, aggravated damages and other damages caused to the claimant due to the unlawful imprisonment of the claimant by the Chief Magistrate on 27th March 2013.
- [29] On the other hand, the defendant in the pretrial memorandum raised the following issues for determination, which the court accepts are the extant issues:
- (1) Was the claimant unlawfully imprisoned when he was remanded pending sentencing to Her Majesty's Prison (as it then was) for the period 27th March 2013 to 3rd April 2013?
 - (2) Is the claimant entitled to damages for unlawful imprisonment?
- [30] Consequently, the particulars of aggravating features of prison are only relevant in this case if I find that the claimant has established his case of unlawful imprisonment. They will speak to the quantum of his damages in light of any proven aggravating circumstances.

Issue 1: Was the Claimant Unlawfully Imprisoned?

- [31] Unlawful imprisonment or more usually called false imprisonment is a common law cause of action or tort, which a claimant establishes by proving complete deprivation of liberty (detention and total loss of freedom) for any time, however short, without lawful cause or justification³.
- [32] There is no dispute that the Chief Magistrate remanded the claimant pending sentencing, and he was detained at Her Majesty's Prison for seven days. However, the defendant asserts lawful justification, contends that the claimant is not entitled to bail following a conviction, and the Chief Magistrate had a discretionary power to revoke bail pending sentence. Therefore, the question is whether the Chief Magistrate had the authority to remand the claimant as she did, pending his sentence for malicious damage.

³ The Common Law library Number 3, Clerk & Lindsell on Tort 16th Edition, paragraph 17-15.

[33] The Magistrate's Code of Procedure⁴ provides:

"239. If at any time during any proceedings before a Magistrate it shall become necessary to adjourn the hearing of the same the Magistrate may from time to time adjourn the case to a certain time and place to be then appointed in the hearing of the parties, or their counsel or solicitors, and if the defendant is in custody he may admit him to bail as in this Act provided, or by his warrant remand him to prison for any time not exceeding eight clear days, and if such remand shall not be for longer than three clear days the Magistrate may verbally order the peace officer in whose custody the defendant may be to keep him in custody and to bring him up for further examination on the day appointed for the adjourned hearing:

Provided that the Magistrate may order the defendant to be brought up to attend such further hearing as aforesaid at any time prior to the expiration of the time for which he was remanded and the officer in whose custody he shall be, shall duly obey such order."

Similarly, the Criminal Procedure Act⁵ states:

"77. Where, on any adjournment of a criminal proceeding, either in the Supreme Court or before a Magistrate, the accused is admitted to bail the recognizance may be conditioned for his appearance at every time and place to which the proceeding may be, from time to time, adjourned:

Provided that nothing in this section contained shall prejudice the power of the Court or Magistrate, at any subsequent adjournment of the proceeding, to refuse to admit the accused to bail, or, as a condition of such person being admitted to bail, to require him to enter into another recognizance as the Court or Magistrate may direct."

[34] It is clear from the provisions cited above that the Chief Magistrate had the power to remand the claimant after convicting him of malicious damage. It would have been upon an adjournment during the proceeding, which does not end until after sentencing. Moreover, as was recently noted in **Patrick Matthews v Director of Public Prosecutions**⁶, a person already convicted of a criminal offence has no inherent right to bail. They are no longer presumed innocent, as someone who has only been charged with a crime. A convicted person has no right to bail but may, in certain exceptional circumstances, be granted bail at the court's discretion.

⁴ Cap. 255 of the Revised Laws of Antigua and Barbuda

⁵ Cap. 117 of the Revised Laws of Antigua and Barbuda

⁶ Claim No: ANUHCv 2021/0299 (delivered 25th August 2021) quoting from *Sinanan and others v The State*(1992) [No 2] 44 WIR 359, and *Commonwealth Caribbean Criminal Practice and Procedure*, (Fifth Edition, Dana S. Seetahal with updates by Roger Ramlogan) at page 68.

- [35] Further, the Chief Magistrate convicted the claimant of malicious damage, which carries a sentence of being liable to imprisonment for any term not exceeding two years, with or without hard labour. Indeed, the claimant has not challenged the Chief Magistrate's jurisdiction to remand him pending sentencing. Instead, the claimant contends the Chief Magistrate was guided by prejudice against transgender people when she remanded him. She did so to punish him for statements allegedly made on a Facebook post about the trial. The defendant denied the allegations of prejudice or bias by the Chief Magistrate against the claimant or transgender persons, for that matter, or that the claimant's remand was by way of punishment for his alleged Facebook post.
- [36] The Chief Magistrate, in her witness statement, states she is an Attorney-at-Law admitted to the Bar of the Antigua Circuit of the Eastern Caribbean Supreme Court in 1997. She is employed in the public service of Antigua and Barbuda as the Chief Magistrate. She served in that capacity since May 2011 and, before that, as Crown Counsel in the Chambers of the DPP. As part of her duties, the Chief Magistrate conducts civil and criminal trials within the Magistrate Courts in Antigua and Barbuda. She hears the parties' evidence and makes rulings based on the weight of the evidence adduced before me.
- [37] During March and April 2013, she conducted a criminal trial in which the claimant was the accused. The Chief Magistrate recalled ensuring that neither her actions nor that of her staff could be interpreted as prejudicial towards the claimant, given the claimant's gender affiliation. Per her usual *modus operandi*, she ensured that the Claimant received a fair and impartial trial of the criminal charge laid against him. The claimant was allowed to obtain legal representation, put his defence before the court, and cross-examine all witnesses who gave evidence on behalf of the prosecution. The Claimant was allowed to call witnesses in support of the defence.
- [38] The Chief Magistrate stated that at the trial's conclusion, the prosecution had established its case beyond a reasonable doubt, and she convicted the claimant of committing the offence of malicious damage. At the time of conviction, she had not yet determined a fair, just, and appropriate sentence; therefore, she remanded the claimant to Her Majesty's Prison pending sentencing. The sole purpose of the claimant's remand was to allow her sufficient time to do the relevant research to arrive at a fair, just and impartial sentence in the circumstances.

- [39] The claimant was transported to Her Majesty's Prison and turned over to the Superintendent of Prison's custody upon her instructions. The claimant was brought back before the Chief Magistrate on 3rd April 2013 for sentencing and sentenced to a fine of \$456.00. She is aware that the Court of Appeal, in its ruling on 11th March 2017, set aside the claimant's conviction and sentence. Still, the reason for its decision, the Court of Appeal, indicated that based on the evidence submitted, she could have properly convicted the claimant of the offence charged.
- [40] The Chief Magistrate, during her cross-examination at the trial, maintained her position. She does not recall saying she is not in the practice of sending first-time offenders to prison for malicious damage or that she needed a week to cool off. Still, the Chief Magistrate maintains that having convicted the claimant, she remanded him to prison to consider the sentence. She denied the allegations of prejudice or bias against the claimant or transgender persons, for that matter, or that she remanded the claimant as punishment for his alleged Facebook post.
- [41] Taking the claimant's case at its highest, the court finds he had not established on a balance of probability that the Chief Magistrate did not have jurisdiction or exceeded her authority when she remanded him to prison for seven days after his conviction pending sentencing for malicious damage. Also, the claimant has not shown that the Chief Magistrate's treated him differently from other persons in her court in remanding him pending sentencing. Indeed, in response to one of the claimant's questions, the Chief Magistrate retorted, "*what is so special about you? I send people to jail all the time.*" To another question, she responded, "*I have sent other persons to jail for malicious damage.*"
- [42] Notwithstanding, the claimant's conviction and sentence were set aside by the Court of Appeal as being unsafe does not, without more, makes the claimant's remand to prison following his conviction unlawful imprisonment. In ***Independent Publishing Company Ltd v Attorney General of Trinidad and Tobago & Anor (Trinidad and Tobago)***⁷, Lord Brown of Eaton-under-Heywood, delivering the opinion of the Privy Council, observed (para 89.): "*Convicted persons cannot in the ordinary way, even if ultimately successful on appeal, seek constitutional relief in respect of their time in prison. The authorities are clear on the point.*" I am equally of the view that the claimant cannot seek relief for unlawful imprisonment where he is remanded pending the sentence after his

⁷ [2004] UKPC 26 (Delivered 8th June 2004)

conviction. This is notwithstanding his conviction and sentence were set aside as unsafe by the Court of Appeal.

- [43] Consequently, the defendant is not liable to the claimant for unlawful imprisonment by the Chief Magistrate's action. There is no basis upon which the court might hold the claimant is entitled to any damages.

Conclusion and Disposal

- [44] For completeness, the court notes that there can be no unlawful imprisonment by the police, the prison officers, or the prison authority. The police officers delivered the claimant, and the prison authority detained him under the order of the Chief Magistrate.⁸ As was mentioned above, the particulars of aggravating features of prison do not raise separate or independent causes of actions in this case, as the claimant pleaded none.

- [45] Therefore, I dismiss the claimant's claim with prescribed costs to the defendant. I can find no basis to resile from the general rule that a successful party will recover costs.

**Justice Rohan A Phillip
High Court Judge**

By the Court

Registrar

⁸ The Common Law library Number 3, Clerk & Lindsell on Tort 16th Edition, paragraph 27-29; and footnote 26 thereof.