

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0069

BETWEEN

OKENO FERGUS

CLAIMANT

AND

**ATTORNEY GENERAL
OFFICER MOHAMMID LAVIA**

DEFENDANT

Appearances:

Mr. Jomo Thomas of counsel for the claimant.

Mr. Kezron Walters of counsel for the defendants.

2022:Jun.28
Jul. 14

JUDGMENT

INTRODUCTION

[1]**Henry, J.:**The phrase ‘protect and serve’ is normally associated with the police force as a body and its individual members. In this case, Mr. Okeno Fergus a resident of Owia has accused Cpl. Mohammad Lavia (Cpl. Lavia’) of the Royal Saint Vincent and the Grenadines Police Force of shooting him in his leg in an unprovoked attack. He seeks from Cpl. Lavia and the State of Saint Vincent and the Grenadines(‘the State’) special, general, aggravated and exemplary damages, interest and costs.

- [2] Cpl. Lavia acknowledged that he shot Mr. Fergus. He asserted that far from being an unprovoked act on his part, he was struck with a bottle by Mr. Fergus and feared a repeat when he saw Mr. Fergus pick up another bottle and prepare to lob it at him. He explained that to repel what he considered to be an imminent strike, he fired the shot from his service firearm in self-defence. He accepted that at the time he was an agent and employee of the State and was acting in the course of his employment as an officer of the Saint Vincent and the Grenadines Police Force.
- [3] Mr. Fergus submitted that Cpl. Lavia was not acting in defence of another or himself when he intentionally shot him. He asserted that the shooting was unjustified and has caused him great suffering and pain. He invited the court to find that Cpl. Lavia intentionally assaulted and battered him without lawful justification.
- [4] Cpl. Lavia and the Honourable Attorney General contended that he was acting within the course of his duty to preserve the peace, prevent the commission of a crime or effect an arrest and at the time held an honest belief that he was defending himself against a lethal attack. They submitted that in shooting Mr. Fergus, Cpl. Lavia used only such force as was reasonable and proportionate and he is accordingly not liable for Mr. Fergus' injuries, loss or damage. I have found Cpl. Lavia and the State liable to Mr. Fergus for assault and battery, the resulting injuries from the gunshot and damages.

ISSUES

- [5] The issues are: -
1. Whether Cpl. Lavia and/or the State is liable to Okeno Fergus for assault and battery with a firearm; and
 2. To what remedies if any, is Mr. Fergus entitled.

Issue 1– Are Cpl. Lavia and/or the State liable to Okeno Fergus for assault and battery with a firearm?

- [6] Assault and battery are tortious acts which may also be prosecuted in the criminal court. Assault is defined as 'a direct threat made by the defendant to the plaintiff the effect of which is to put the

plaintiff in reasonable fear or apprehension of immediate physical contact with his person'¹ and any 'intentional and overt act causing another to apprehend the infliction of immediate and unlawful force. The threat of violence exhibiting an intention to assault will give rise to liability only if there is also a present ability to carry the threat into execution.'²

[7] A battery is 'an act of the defendant which directly and intentionally or recklessly causes some physical contact with the person of the claimant without his consent. Battery involves a voluntary and positive act on the part of the defendant against the claimant whether directly or by a weapon or projectile.'To establish battery, it must be proved that the defendant directly caused the contact about which the defendant complains.³

[8] Defence of oneself or another will negate liability for assault and/or battery if the force used is not excessive. In such circumstances, the onus is on the defendant to prove that he used only such force as was reasonably necessary or avoided force that was grossly disproportionate to repel the claimant's attack. A person who erroneously and unreasonably believes that he is under attack is not entitled to use force in self-defence.⁴

Okeno Fergus' case

[9] The shooting took place in the early morning hours of March 3rd, 2019. Mr. Fergus and three of his friends were travelling from Sandy Bay to Fancy in two separate vehicles around 3.00am. Mr. Fergus was in the front car which was being driven by Mr. Zarock Bowens. Mr. Denzil Bowens and Mr. Garvin Simmons drove behind them. Mr. Fergus' path would not have crossed Cpl. Lavia's that morning except that when they got to Crossroad, Owia, Mr. Denzil Bowens was tooting his horn to get the attention of those in the vehicle ahead of him. They all stopped.

¹Commonwealth Caribbean Tort Law, Gilbert Kodilinye, 3rd ed. Pg. 12.

² Halsbury's Laws of England, Vol. 97 5th Ed. Para. 526.

³ Ibid. at paragraphs, 527 and 529.

⁴ Ibid. at para. 532.

- [10] Mr. Denzil Bowens disembarked and told the others that he had left his phone at Sandy Bay. He decided that he should return for it while the other three waited for him in the area where they had pulled over. It was in the vicinity of Suzie's shop and bar where a fete and bingo were being held. Mr. Denzil Bowens left to retrieve his phone. His three traveling companions waited at Owia for him.
- [11] Mr. Fergus and his witness Zarock Bowens recounted that they were standing outside Suzie's shop when Cpl. Lavia and his brother Paggie descended the steps from the shop together. Mr. Bowens said that Cpl. Lavia was behind Paggie about an arm's length away. As he and his brother went past them, Paggie greeted Mr. Simmons and Mr. Lavia in turn. He said to Mr. Simmons 'cuz, wey de scene boy' and addressing Fergus as 'Bundee', asked him the same question. He replied 'me dey here, me good'. According to Mr. Fergus, after he responded to Paggie, Cpl. Lavia scolded his brother, asking him 'you ah shout then dotish man dey'. Mr. Bowens said to Cpl. Lavia, 'if me dotish you dotish too'.
- [12] Cpl. Lavia then approached Mr. Fergus and retorted 'wehy you say dey, wha?' to which Mr. Fergus repeated his earlier statement and asked, 'way me do yo, way me fucking do yo?'. Cpl. Lavia was about 5 feet away and getting closer, even while his brother Paggie tried to restrain him, asking him to control himself. Cpl. Lavia grabbed a beer bottle from Paggie's hand and threw it at Mr. Fergus who ducked so that the bottle missed him. He repeated the question 'way me do yo, way me fucking do yo?'
- [13] By then, Cpl. Lavia had reached him and he chucked Mr. Fergus. Mr. Fergus repeated the question and started removing the bag he had over his shoulder. He said he was upset and gauging himself in case the officer hit him. He passed his bag to Mr. Bowens and immediately, Cpl. Lavia pulled his service firearm from his waist and shot him. The bullet struck Mr. Fergus in his leg and he fell to the ground. Cpl. Lavia ran from the scene.
- [14] Mr. Bowens came to Mr. Fergus' assistance. He tied his t-shirt around the gunshot wound, put him in the vehicle and took him to the Owia clinic. They could not treat him there so he was taken to the

Georgetown Hospital and later transferred to the Milton Cato Memorial Hospital. Mr. Fergus was admitted to the male surgical ward for 8 days, after which he was discharged. Mr. Fergus produced medical injury forms but no medical expert testified about the injuries he sustained or the matters recorded on the forms. The contents of the report are therefore excluded from consideration.

- [15] Mr. Fergus denied provoking, threatening or fighting Cpl. Lavia, his brother Paggie or anyone else or behaving in a way which justified being shot by Cpl. Lavia. He said that he was shocked and alarmed at Cpl. Lavia's response and wondered if he was drunk. He was arrested and charged in July 2019 with the offence of wounding Cpl. Lavia and tried at the Georgetown Magistrate's Court where he was convicted. On appeal, the conviction was overturned and the case remitted to be tried by another magistrate. That hearing has not yet taken place.

- [16] Under cross-examination it was put to Okeno Fergus that Cpl. Richardson issued him with two medical injury forms on the morning of the incident to which he replied that he could not remember what they did or did not do to him, or gave to him that morning, because he was in so much. He added that he does not even know who went to the hospital with him. He acknowledged that he was interviewed by Ms. Richardson at the Biabou Police station on 24th June 2019 when they came and locked him up. He indicated that he did not give a statement to Cpl. Richardson.

- [17] It was put to him that he never made report against Cpl. Lavia. He insisted that he made a report to the police at the same time that he got shot. He asserted that the police knew then that Cpl. Lavia shot him. He acknowledged that he did not go in and make a formal complaint.

- [18] Mr. Bowens testified further that around 6.00am that day he was at home sleeping when Cpl. Lavia and a number of other police officers came to his home and arrested him. They told him that they were looking for the gun that Okeno Fergus had. They took him into their vehicle up to where the sign that says welcome to Fancy is located. They stopped the vehicle, took him out and started to beat him up telling him that Okeno had a gun and he must say that Okeno had a gun. He refused.

- [19] Mr. Bowens stated that the officers were trying to record him saying that Okeno Fergus had a gun. In his words, they were trying to make him give a false confession. He was taken to the police station and released later that day after his lawyer came to make inquiries as to why he was

arrested. It was never put to him that he was not detained and arrested that day as he stated. I find that he was. It was suggested to him that he made up the part about being beaten and an officer tried to get him to make a false confession that Okeno Fergus had a gun. He was unshakeable. He insisted that he was telling the truth.

- [20] Mr. Fergus and Mr. Bowens' accounts were similar. They maintained that narrative under intense cross-examination. They denied that there was a tussle between Okeno Fergus and Marsh Lavia or that Fergus threw a bottle at Cpl. Lavia or that he subsequently attempted to throw another bottle at Cpl. Lavia which precipitated the gunshot.

The State and Cpl. Lavia's defence

- [21] Except for minor similarities, Cpl. Lavia told a completely different story. His witnesses corroborated his account. He testified that he knows Okeno Fergus who is also called 'Bundee Weed'. Cpl. Lavia recalled being at Suzie's shop that morning. Around 1.30am he was standing in the yard at the side of the shop, when one Kenton Lorraine aka Charlie approached him and told him that Bundy Weed came up to him, pulled a gun at him and slapped him. Cpl. Lavia said he was not on duty, so he told Charlie to go to the Owia Police station and make a report.
- [22] A few minutes later, he was in Emran Lorraine's company when Charlie came and told Emran the same tale. Cpl. Lavia again told him to make a report at the Owia police station. Cpl. Lavia left the event with his brother Marsh Lavia aka Paggie at about 4.15 am. As he was descending the steps of the shop, his brother Marsh was about 3 steps ahead of him. While he was making his way down, one Visroy Williams told him that someone had pelted a stone behind him, as a result of which he sustained an injury to his left foot. He advised Williams to make a report at the Owia Police station. By then, Marsh Lavia had gone way ahead of him.
- [23] After Cpl. Lavia finished speaking with Visroy Williams, he went into the main road where he heard loud voices and saw a group of people behaving in a hostile manner. He saw his brother Marsh and Mr. Bowens in a tussle. He went to them, shouted 'police' and separated them. As he was doing so a group of guys from Fancy surrounded him in a hostile manner. Mr. Fergus pushed him in his chest, picked up a Hairoun bottle from the ground and struck him in his head. He immediately

began to bleed. He took off his sweater and tried to staunch the bleeding. He followed Mr. Fergus who had in the meantime run over to a car parked in the middle of road bearing registration number PK884.

[24] Mr. Fergus took another Hairoun bottle from the top of the vehicle and attempted to throw it at Cpl. Lavia. Cpl. Lavia said that he became extremely fearful for his life. He therefore drew his service pistol and fired a low shot in his direction, whereupon Mr. Fergus fell to the ground and held his foot.

[25] Cpl. Lavia said he was bleeding heavily and felt that he was going to pass out. Marsh Lavia, Emran Lorraine and Rohan Lavia assisted him to get a ride to the Owia Health Center then to the Owia Police Station. At the police station, Cpl. Richardson gave him medical forms that he took back to the health center. He saw a doctor at the Georgetown Hospital the next day who completed the medical forms and returned them to him.

[26] Cpl. Lavia explained that he is assigned to the Special Patrol Unit. He said that because of the work that the unit is engaged in, the team members may be called into service at any time and are permitted to always keep their service pistols.

[27] On being questioned by learned counsel Mr. Jomo Thomas, Cpl. Lavia said that he had no conversations or verbal exchanges with Mr. Fergus that morning and Okeno Fergus never said anything to him. He just busted his head for no reason at all. He was asked this twice at different points under cross-examination. On the second occasion, he said 'It is correct that I did not say anything to Okeno and he said nothing to me. He explained that he was literally 4 feet or about an arm's length away from Fergus when he busted his head. He maintained that his shooting of Okeno Fergus was provoked. He denied pelting a bottle at Okeno Fergus or running from the scene.

[28] Emran Lorraine recalled that while they were at Suzie's shop that morning, his brother Kenton Lorraine told him in Cpl. Lavia's presence that Bundy Weed 'pulled a gun on him at a guy named "fire's place"'. Although Cpl. Lavia told him to go to the police station to make a report he did

not. Later, he watched from inside Suzie's shop as Cpl. Lavia descended the steps. Music was playing at the time. He noticed that Marsh Lavia and Mr. Fergus were having an argument under a streetlight about 24 feet away from where he was in the shop. He saw Cpl. Lavia go to them, pull his ID card and say 'police'.

[29] Mr. Fergus who had a Hairoun bottle in his hand turned to Cpl. Lavia and struck him in his head with the bottle. He noticed that Cpl. Lavia's head was bleeding profusely, blood was running down his face and he was holding his head. He observed Mr. Fergus run to his friend's car, grab another bottle and took aim to pelt it at Cpl. Lavia. He heard a gunshot and saw Fergus fall. His recollection is that Cpl. Lavia got into a white car to get away from the scene. He stayed around at the shop for a while before heading home.

[30] Under cross-examination, Mr. Lorraine made it clear that his attention was so focused on Cpl. Lavia as he descended the steps that he did not see Marsh on the steps. He stated 'I saw when Officer Lavia left. I watch him go down the stairs. I did not see Marsh going down the stairs. I look at Mohammad Lavia. I know I saw Officer Lavia left. I was not looking at Marsh. I never saw Marsh left.' It was put to him that they left the shop side by side or that Marsh was just ahead of Cpl. Lavia. He responded 'I saw Officer Lavia left by himself. I was not looking at Marsh. I was looking at Officer Lavia because that's my friend.' His evidence is that he watched intently as Cpl. Lavia descended the steps and broke up the argument between Marsh Lavia and Okeno Fergus. It seems that he was oblivious to anyone else on that step apart from Cpl. Lavia.

[31] Mr. Lorraine was equally adamant that he did not see Okeno Fergus and Marsh Lavia fighting. They were only arguing. He did not see Okeno Fergus with a gun.

[32] Mr. Lee John-Jordon was also at the function at Suzie's shop. He was standing on a bank above the public road when he saw an altercation between Marsh Lavia and Bundy Weed. He saw Cpl. Lavia walk towards them, remove his ID from his wallet and say to both of them 'police'. Bundy Weed was still behaving aggressively. Cpl. Lavia tried to talk to him but he took the Hairoun bottle in his hand and slammed it into the left side of Cpl. Lavia's forehead at close range. He noticed that

Cpl. Lavia was bleeding a lot and had blood running down his face. Okeno Fergus ran towards a car and retrieved another bottle to take aim at Cpl. Lavia who fell to the ground, drew his firearm and shot Bundy Weedtelling him 'take that'.

- [33] Under cross-examination, Mr. John-Jordon explained that he was about 20 yards away from the altercation and witnessed Mr. Fergus and Mr. Marsh Lavia wrestling. They were not kicking and boxing each other. He recalled that no music was playing at that time. On being pressed by learned counsel Mr. Thomas, he said that the meant that the music was on but playing at a low level. He explained that after Cpl. Lavia was struck with the bottle he fell to the ground and was in that position when he fired the shot at Okeno Fergus.

Okeno Fergus' submissions

- [34] Mr. Fergus submitted that Cpl. Lavia's and his witnesses' testimonies are riddled with inconsistencies and should not be believed. He pointed out that Cpl. Lavia admitted to leaving the shop with his brother while Mr. Lorraine claimed that this did not happen. He noted that Mr. John-Jordon asserted that from 60 feet away he saw Cpl. Lavia remove his ID and heard him shout 'police' while music was playing. Mr. Fergus argued that he should not be believed.
- [35] Mr. Fergus submitted further that his and his witnesses' accounts were simple, straight forward, consistent, truthful and reliable and were neither contradicted nor shown to be untruthful. He argued that Cpl. Lavia caused him physical injury from a direct and intentional contact when he shot him with his gun. He contended that even if Cpl. Lavia's account is to be believed, he would not have been a threat to Cpl. Lavia, since by the officer's account, he had already run away after striking him with the bottle. He concluded that Cpl. Lavia committed the intentional acts of assault and battery against him unjustifiably and without his consent and therefore the defence of self-defence cannot stand.

Defendants' submissions

- [36] The defendants submitted that there are grave inconsistencies in Mr. Fergus' account. They argued that Okeno Fergus and Zarock Bowens contradicted each other as to whether Cpl. Lavia and his

brother were walking together; denied knowing of Cpl. Lavia's head being busted and therefore their evidence was incomplete or untrue. They submitted that no rational person, let alone a police officer would shoot someone unprovoked and run away from an altercation, especially while bleeding.

[37] Learned counsel Mr. Kezron Walters argued on their behalf that Okeno Fergus was at all times the aggressor and in the course of behaving in that way committed the crime of wounding Cpl. Lavia. He submitted that Cpl. Lavia held an honest belief that he was defending himself against a lethal attack by Mr. Fergus who posed a continuing threat of further injury to him. He submitted further that during the course of an actual attack, Cpl. Lavia used reasonable and proportionate force that was commensurate with the attack. Learned counsel contended that Cpl. Lavia used a measure of last resort to prevent further injury, and only after he had already been injured.

[38] Learned counsel contended that Cpl. Lavia did not assault or batter Mr. Fergus since he was by the act of shooting merely acting within the scope of his duty to preserve the peace, prevent the commission of a crime or to effect an arrest. He submitted that the version of events presented by the defence is more probable than Okeno Fergus' account. He invited the court to draw a negative inference from the fact that Mr. Fergus did not pursue a formal report against Cpl. Lavia and this suggests that he believed that he was culpable. He argued that an objective test must be applied in considering whether the torts of assault and battery were proven.

[39] Learned counsel Mr. Walters submitted that section 12 of the Police Act⁵ imposes a duty on a police officer to preserve the peace and prevent and detect crimes. He argued further that section 22 of the **Criminal Procedure Code**⁶ authorizes the use of proportionate force in making an arrest.

Analysis

[40] The respective accounts of the parties are miles apart on critical issues. As can be expected, there were slight variations in the witnesses' testimonies. However, Cpl. Lavia and his witnesses

⁵ Cap. 391 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

⁶ Cap. 172 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

revealed the greater and more material inconsistencies and contradictions among them. Cpl. Lavia is the only one who said that Okeno Fergus pushed him in his chest. Curiously, Mr. Lorraine who watched him continuously until he shot Okeno Fergus did say that this happened. He did not see Marsh Lavia descending the steps in front of or beside Cpl. Lavia. It is more than passing strange that Mr. Lorraine did not see Marsh Lavia at that time, especially since Cpl. Lavia, Mr. Fergus and Mr. Bowens testified to this effect. It struck me while he was testifying that he was only concerned with keeping to the strict script of his assertions and was unable to engage with any scenario which varied from his text, particularly when asked about the descent of Cpl. Lavia on the steps leading from Suzie's bar.

- [41] Mr. Lorraine's testimony varied from Cpl. Lavia's and Mr. John-Jordon in another important respect. He was adamant that he observed Okeno Fergus and Marsh Lavia in an argument under the streetlight. He stated that they were not fighting. Cpl. Lavia and Mr. John-Jordon said that they were tussling and wrestling, both of which connote aggressive contact of some sort or a fight. Mr. Lorraine said that the music was playing in the bar where he was at the time.
- [42] In any event, he was clear that he had watched Cpl. Lavia all of this time and observed him go over and say to the two men in the argument 'police'. It is mystifying that he witnessed only an argument when Cpl. Lavia and Mr. John-Jordon saw wrestling and tussling. I also find it hard to believe that from that distance away he could discern that Cpl. Lavia had his police ID in his hand and heard the word 'police' being uttered, while being surrounded by music and the inevitable chatter and background noise from the fete. Mr. Lorraine did not impress me as a witness of truth and I do not believe him.
- [43] Another huge discrepancy is Mr. John-Jordon's assertion that Cpl. Lavia fell to the ground and fired the shot from that position. He is the only witness to see that. Everyone else spoke about Cpl. firing while heading towards Mr. Fergus and implicitly from an upright position. It is also curious too that he did not readily recollect that music was playing at the fete and only later admitted that there was music which conveniently was playing at a low volume. It goes without saying that the only way he could account for hearing Cpl. Lavia shout 'police' from 60 feet away, was if there was no music

or if the volume was low. I consider him to be a witness of convenience and reject his testimony in its entirety.

- [44] Cpl. Lavia did not explain why he elected to follow Mr. Fergus after he was struck by the bottle according to him. He hints through his submissions that he was intent on making an arrest or preserving the peace. It may be that he was satisfied that the peace had been preserved after the shooting and he therefore abandoned the arrest objective or perhaps he considered he needed urgent medical attention. It is inappropriate to speculate.

Self-defence

- [45] While Cpl. Lavia's version of events is on its face plausible, I do not believe him. The holes in his witnesses' testimonies does not help his case of self-defence. In any event, even if he had presented a coherent case, I consider that the force he used to repel what, from his account was a feared strike from a bottle, I am of the view that he used excessive force. It was unreasonable and disproportionate. In my considered opinion, he needed to do nothing more than point his firearm at Mr. Fergus and order him to drop the bottle or simply shift his position to avoid being hit. He could also have discharged a shot into the air. Any of those steps would have been enough to avert the alleged perceived attack.
- [46] Okeno Fergus and Zarock Bowens were consistent and credible. They were forthright and did not have contradictions in their testimony that went to the root of the central issue or material particulars. I believe them. In all of the circumstances, I reject Cpl. Lavia's or his witnesses' accounts and the self-defence assertion. I find that Mr. Fergus never struck Cpl. Lavia with a bottle or prepared to strike him with a bottle. I find too that Cpl. Lavia shot Mr. Fergus because his feelings were injured and he was embarrassed when Okeno Fergus told him that he was dotish and admittedly used other insulting words towards him.
- [47] I am satisfied on a balance of probabilities that the shooting of Mr. Fergus was unprovoked, unjustified, not in pursuance to any reasonable and necessary need to defend himself or anyone and out of all proportion to the insults hurled at Cpl. Lavia by Mr. Fergus. I find therefore

that Cpl. Lavia shot Mr. Fergus without lawful justification and thereby assaulted and battered him by shooting him in the foot. Cpl. Lavia and the State are therefore liable to Mr. Fergus for his injury, loss and damage occasioned by the unwarranted attack on his person. I so hold.

[48] Another aspect of the case which is concerning, is the fact that Cpl. Lavia accompanied his police colleagues to Mr. Bowen's home shortly after the incident to arrest him on what now appears and I conclude to be a pretense of asking for Okeno Fergus' gun. Firstly, even if the police had a legitimate reason to interrogate Mr. Bowens, Cpl. Lavia should not have been part of that team as he was one of the players in the earlier incident. Secondly, the police did not seem to have visited Mr. Bowens house to execute a search warrant. Thirdly, it is not alleged that he was implicated in the earlier incident so there was no apparent reason to arrest him. Fourthly, he was released without charge after his detention after his lawyer intervened on his behalf.

[49] I am left with the distinct impression that Mr. Bowens' arrest was made for another reason which has not been addressed by Cpl. Lavia. I accept Mr. Bowen's testimony that he was beaten by the police that morning and that they attempted to extract from him statements that Mr. Fergus had a gun. This is relevant to assessing the credibility of the main players and I have factored it into an assessment of the facts and in making my findings. It bolsters my conclusion that Mr. Fergus and Mr. Bowens were being truthful and that Cpl. Lavia and his witnesses were not.

Issue 2– To what remedies is Mr. Fergus entitled?

[50] Neither party made submissions as to the reliefs claimed by Mr. Fergus. I shall address them shortly. It is trite that assault and battery are actionable without proof of actual damage and in all cases nominal or substantial general damages are recoverable for any physical or mental injury caused by the assault and battery. The compensatory principle applies to such awards in cases of injured feelings. Exemplary damages may be awarded in certain cases, such as where the allegation is that the actions of the police have been oppressive and arbitrary. Special damages may be recovered in respect of specific pecuniary loss that has been pleaded and proven. To the

extent that Mr. Fergus is able at the assessment stage of these proceedings, to prove the expenditure of \$348.50 claimed, he entitled to all or part of that sum as special damages.⁷

[51] An award of aggravated damages may be made in a case where the defendant's conduct, manner of committing the assault and his motives for the assault have 'aggravated the claimant's damage by injuring his proper feelings of dignity and pride.' Of relevance is whether the defendant acted out of 'spite or behaved in a high-handed, malicious, insulting or aggressive manner'. His conduct and his legal practitioner's conduct up to the end of the trial is also relevant.

[52] I cannot understand what would drive a police officer to treat a resident of any country in the way Cpl. Lavia behaved towards Mr. Fergus that morning. It was inhumane, merciless, aggressive, high-handed and totally undeserved. The court cannot countenance such conduct in a democratic society where the rule of law pervades the administration of justice system and the society. If ever there was a case that attracted exemplary, aggravated and substantial general damages for loss, damage and physical emotional and mental injury, this one certainly does. I hold that Mr. Fergus is entitled to recover special, general, exemplary and aggravated damages from Cpl. Lavia and the State.

COSTS

[53] The general rule in relation to costs, i.e., that costs follow the event, is applicable to this case. Mr. Fergus is entitled to recover prescribed costs pursuant to CPR rule 65.5, calculated based on the quantum of damages awarded at the assessment stage of these proceedings. It is so ordered.

Miscellaneous

[54] Cpl. Lavia was cross-examined at length about statements he made in the Magistrate's Court in the criminal trial against Mr. Fergus. No transcript or other record of those proceedings were produced in this trial. Accordingly, it was not helpful to the court in determining whether he gave a different

⁷ Halsbury's Laws of England Vol. 29 (2019) para. 497.

account at this trial. There was no documentary or other basis for finding that his account at this trial varied from in the criminal proceedings at the Magistrate's Court.

ORDER

[55] It is ordered:

1. Judgment is entered for Okeno Fergus against Cpl. Mohammad Lavia and the State of Saint Vincent and the Grenadines.
2. Cpl. Mohammad Lavia and the Honourable Attorney General shall pay to Mr. Okeno Fergus special, general, aggravated and exemplary damages with interest at the statutory rate, to be assessed on application to be filed and served on or before September 16th, 2022.
3. Cpl. Mohammad Lavia and the Honourable Attorney General shall pay to Mr. Okeno Fergus prescribed costs pursuant to CPR 65.5 to be calculated based on the quantum of damages awarded at the assessment stage.

[56] I am grateful to the legal practitioners for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar