

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

GRENADA

CLAIM NO. GDAHCV2014/0517

BETWEEN:

DEXTER NOEL

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mrs. Celia Edwards, QC with her Mr. Deloni Edwards for the Claimant

Mrs. Karen Reid-Ballantyne, Solicitor General, for the Defendant

2022: January 20;
February 18; (Closing submissions)
March 17; (Further submissions)
June 10

JUDGMENT

[1] **GLASGOW, J.:** The claimant, Dexter Noel, (Mr. Noel) filed this claim in which he asserts that he was assaulted and battered by members of the Royal Grenada Police Force at a traffic checkpoint within the vicinity of the St. David's Police Station, Petite Esperance, Saint David.

Mr. Noel's case

- [2] Mr. Noel pleads that on 28th April 2009 at approximately 8:00 pm he was driving from Grenville, Saint Andrew in the direction of Saint David in his minibus registration number HAA443. He claims that during his journey from Grenville, he encountered a police traffic checkpoint at Hope, Saint Andrew, where his minibus licence and registration were checked. Thereafter, he continued his journey until his last passenger departed at La Tante, Saint David leaving him and the conductor, Elwin Baptiste as the only occupants of the vehicle.
- [3] Mr. Noel further pleads that while driving towards the vicinity of the St. David's Police Station he decided to turn off into the road which is immediately before the police station to collect his family. When he attempted to turn into the road, he encountered another police traffic checkpoint near the police station. There was a vehicle in front of him which was being checked by the police. The vehicle being checked by the police blocked the entrance of the road into which he intended to divert. As a result, a police officer instructed him to drive into the police station yard so that the vehicle which was in front of him could be checked. Upon completion, the police officer directed Mr. Noel to proceed along to his destination. Mr. Noel went into the road immediately before the station and picked up his family.
- [4] Mr. Noel claims that after picking up his family and whilst driving towards the main road, a police officer Kaison Smith DC 927 (Officer Smith) stopped and informed him that he was checking for driver's licences and insurance. Mr. Noel says that he complied with the request. Although he obeyed Officer Smith's order requesting to see his licence, another officer Linus Augustus PC 587 (Officer Augustus) came and demanded to see his driver's licence. Mr. Noel states that he gave the Officer Augustus the driver's licence and remarked "if is my licence you want to see, look". Mr. Noel explains that Officer Augustus was offended and replied "because you work with police you feel you know the law". Mr. Noel replied "what you want with me? You asked me for my licence and I gave it to you". Officer Augustus then

threatened to arrest him for “giving him talk”. At this point, Mr. Noel reached for his camera and started to record the incident.

[5] Mr. Noel further explains that when he started to record the incident, Officer Augustus, opened the driver’s door of the bus and said “you are under arrest” and attempted to pull him from his seat. Mr. Noel states that his seatbelt was still secured and thus he was unable to get out. When the seatbelt was released, Officer Augustus forcefully pulled him from the vehicle. Thereafter, the bus began to roll back with Mr. Noel’s family and the conductor on board.

[6] Mr. Noel states that he attempted to alert Officer Augustus that the bus was rolling back. His response was “I don’t not want to hear anything”. Mr. Noel avers that when Officer Augustus looked back and realised what was transpiring, he released Mr. Noel who went after the bus. The bus collided with a wall. After the collision with the wall, the bus continued to roll back and the conductor leaped forward and pulled up the handbrake by which time the bus had hit a second wall. Officer Augustus held him by his arm and brought him to the police station.

[7] Mr. Noel claims that he suffered pain in his arm as a result of the manner in which Officer Augustus arrested him and as such he sought medical attention. He claims that:-

- (1) His arm was kept in a cast for about three weeks and he could not work;
- (2) His salary at the time was \$ 2,000.00 per month;
- (3) He was kept in a cell overnight and released in the afternoon of the following day;
- (4) His children were traumatised and attended counselling;
- (5) He earned additional income doing farming and reared 267 rabbits. As a consequence of his injury he was unable to feed his rabbits which subsequently died. One rabbit was valued at \$67.00 and its meat was valued at \$15.00 per pound.

[8] As for relief, Mr. Noel pleads damages for assault and battery.

Defendant's case

- [9] In response to the claim, the defendant, the Attorney General denies that members of the Royal Grenada Police Force were involved in the alleged acts committed. Further, having regard to the allegations that police officers were involved in the incident, the defendant's response is that the Commissioner of Police ought to be the proper defendant in the proceedings.
- [10] With respect to the alleged incident involving the police officers and Mr. Noel, the defendant's defence is that, save and except the fact that a number of police officers attached to the St. David's police station were conducting a routine traffic check in Petite Esplanade in the vicinity of the St. David's Police station, the defendant has no knowledge of the incident. The defendant puts Mr. Noel to strict proof of the name and rank of the police officers mentioned in paragraphs 9 and 10 of the statement of claim. Further, the defendant puts Mr. Noel to strict proof as to his alleged loss and injury.
- [11] In the alternative, the defendant relies on section 2 of the Public Authorities Protection Act¹ (the Act) to the effect that this is an action against a person in the execution of a public duty or statute. The claim is statute barred since it was not commenced within six months next after the alleged act, neglect or default.

Discussion and Analysis

¹ Cap. 262 of the 2010 Continuous Revised Edition of the Laws of Grenada

Whether the arrest was lawful

- [12] Mr. Noel asserts that he was assaulted and battered by police officers at a traffic checkpoint near the St. David's Police Station. In respect of what amounts to an assault and battery, **Halsbury's Laws of England** provides:

"Assault is an 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 (or perhaps a perceived ability to carry the threat into execution). **An assault may be committed by words or gestures alone, provided they cause an apprehension of immediate and unlawful force** (emphasis added)

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 consent²"

- [13] Mr. Noel was arrested by the police for assault during a traffic stop. An assault is a summary offence under the section 81 of the **Criminal Code**³ which provides that *"[w]hoever unlawfully assaults any person shall be liable to imprisonment for three months, or to a fine of one thousand dollars, or to both"*.

- [14] Section 22(1) of the **Criminal Code** provides the definition for assault without battery as follows:

" (1) A person makes an assault without actual battery on another person if, by any act apparently done in commencement of an assault and battery, **he or she intentionally puts the other person in fear of an instant assault and battery.**" (Emphasis added)

- [15] Officer Augustus stated at paragraph 24 of his witness statement that *"he refused to comply, instead he gesticulated pointing his right hand, which he removed from the steering wheel, into my face"*. Further, he continued at paragraph 26 that *"I told Noel that he assaulted me by waving his hand into face whilst asking him to*

² Halsbury's Laws of England: Tort (Vol 97A (2021) at paras. 127-128

³ Cap. 72A of the 2010 Continuous Revised Edition of the Laws of Grenada

comply with my instruction.” It is Mr. Noel’s case that “*Officer Augustus then threatened to arrest me for ‘giving him talk’...*” as stated at paragraph 18 of his witness statement.

- [16] Section 22(1) of the **Criminal Code** and **Halsbury’s** quoted above suggest that an element of an assault is the intention of one to place another in fear of or apprehension of the application of immediate or instant unlawful force. This was indeed the reasoning of the court in **Danny Severin v The Attorney General**⁴, where Belle J stated at paragraph 50 of the judgment that:

My understanding of the law relating to assault however is, **that apprehension of the use of some immediate, unlawful force to the person, is an ingredient of the offence or the unlawful act. But the apprehension referred to is not synonymous with alarm.** See: Clerk and Lindsell on Torts 20th Edition, Michael A. Jones, London: Sweet & Maxwell, 2010 page 991. Indeed a brave person who is not alarmed by threats or attacks of a minor nature could never plead that he was assaulted if counsel’s submission was correct. **The law is that the apprehension need therefore be no stronger than awareness of possible harm being inflicted without one’s permission.** (Emphasis added)

- [17] Taking Officer Augustus’ contention at its highest, I am of the view that the mere fact that Mr. Noel gesticulated into his face, without more is not sufficient to amount to an assault. At trial, Officer Augustus stated that Mr. Noel kept “*pointing his hand at my face less than two feet away... so I warned him and tell [sic] him that is an offence*”. Officer Augustus gave no indication on the pleadings or at trial that Mr. Noel intentionally caused him to apprehend the “*immediate fear of unlawful force*” by gesticulating in his face. Additionally, there is no evidence that Mr. Noel was gesticulating in a threatening or highly aggressive manner. Therefore, I am of the view that the grounds advanced for Mr. Noel’s arrest for assault were not justified and as such the arrest was unlawful.

Whether the force used was necessary

⁴ SLUHCv2008/0973

[18] The defendant argues that the police officers are empowered under statute to use reasonable force as necessary in conducting an arrest. Sections 54 and 55 of the **Criminal Code** as amended prescribe:

54. Grounds on which force or harm may be justified, within prescribed limits

Force may be justified in the cases and manner, and subject to the conditions, hereafter in this Title mentioned, on the ground of either of the following matters, namely—

.....

- (d) authority to arrest, and detain for a felony; or
- (e) authority to arrest, detain or search a person otherwise than for a felony; or
- (f) necessity for prevention of or defence against crime; or
- (g) necessity for defence of property or possession or for overcoming obstruction to the exercise of lawful rights;

55. General limits of justifiable force or harm

Notwithstanding the existence of any matter of justification for force, **force cannot be justified** as having been used in pursuance of that matter—

- (a) **which is in excess of the limits** hereinafter prescribed in the section of this Title relating to that matter; or
- (b) **which in any case extends beyond the amount and kind of force reasonably necessary for the purpose for which force is permitted to be used.** (My emphasis)

[19] Having found earlier that Mr. Noel's arrest was unlawful, there is no need to consider whether the police's use of force was reasonably required and necessary. There was no basis for the arrest and as such no need to use force to execute the same. Nevertheless, for the sake of completeness, I will consider the police's use of force in this case.

[20] The facts of this case arise out a traffic stop and check conducted by police officers near the St. David's Police Station. It is uncontroverted that Officer Augustus carried

out the arrest whilst Mr. Noel was still in his vehicle. What is factually in dispute is the manner in which the arrest was executed by Officer Augustus.

[21] Mr. Noel's case is that Officer Augustus opened the door of the bus and attempted to pull him out whilst his seatbelt was still fastened. Officer Kaison Smith, who was also present during the arrest and gave evidence in support of the defendant's case stated that Officer Augustus told Mr. Noel that "*he was under arrest and requested that he exit the vehicle but resisted. Augustus attempted to remove the seatbelt from around the Claimant, but he resisted that too*"⁵. Officer Augustus stated that Mr. Noel refused to leave the vehicle as directed and as such he opened the door and attempted to unfasten the seatbelt. Officer Augustus also pleads that the bus began to roll back and collided with a wall. Thereafter, he states that Mr. Noel unfastened his seatbelt and exited the vehicle.

[22] Officer Augustus' evidence in respect of the execution of the arrest is in direct conflict with Officer Kaison Smith's evidence, who was present at the scene and Mr. Noel's evidence. Both Mr. Noel and Officer Smith state that Officer Augustus attempted to arrest Mr. Noel while he was still in the vehicle with his seatbelt still fastened. However, Officer Augustus states that Mr. Noel alighted from the vehicle on his own volition after the collision with the wall.

[23] All the circumstances of the incident between Mr. Noel and Officer Augustus suggest and I accept that Officer Augustus sought to place Mr. Noel under arrest for the offence of allegedly assaulting Officer Augustus. I find that in the process of arresting Mr. Noel, Officer Augustus pulled Mr Noel from the driver's seat by his arm while his seatbelt was still fastened. Thereafter, the seatbelt became loosened and Officer Augustus physically removed Mr. Noel from the bus and restrained him. As a result of the forcible removal, the bus began to roll back and collided with a wall.

⁵ Paragraph 10 of the Witness Statement of Kaison Smith

[24] I find that the manner in which Officer Augustus executed the arrest was excessive, unnecessary and unreasonable. Officer Augustus explains that he placed his hands on Mr. Noel to “confirm the arrest”. I have already indicated my finding that he placed his hands on Mr. Noel to remove him from the bus. There was no need for this action. Officer Augustus had already notified Mr. Noel of the arrest. In my view, there was no need for Officer Augustus to place his hand on Mr. Noel’s shoulder to “confirm the arrest” as he says. After indicating that Mr. Noel was under arrest, there appears to be no plausible reason apparent as to why force was even necessary in the circumstances of this case.

Whether the claim is barred pursuant to section 2 of the Public Authorities Protection Act.

Claimant’s further submissions

[25] On 17th March 2022, Mr. Deloni Edwards, filed further submissions pursuant to the court’s direction in respect of whether the claim is statute barred. Mr. Edwards submits that the police officer’s unlawful assault on Mr. Noel cannot fall within the class of action contemplated by the Act. In essence, Mr. Edwards submits that Officer Augustus’ actions during the incident were outside the scope of his duties as a police officer and as such the defendant cannot rely on the provisions of the Act. Mr. Edwards submits that several authorities within our region have pronounced on what duties are contemplated by the Act.

[26] Mr. Edwards refers to Bruce-Lyle J’s dicta at paragraphs 20-22 of **Samuel Barnwell v The Attorney General of Saint Vincent and the Grenadines and another**⁶.

[27] Mr. Edwards submits that the court in **Samuel Barnwell** found that the injuries sustained by the claimant in that case were as a result of an unnecessary assault on him by a public officer. Therefore, the public officer was not protected under the Act. In this case, Mr. Edwards submits that Mr. Noel is alleging that he was

⁶ SVGHCV2005/0493

unlawfully assaulted and battered by Officer Augustus on a routine traffic check and as a result he suffered injury. Mr. Edwards relies on the cases of **Bryan v Lindo**⁷ and **Gordon v The Attorney-General**⁸.

- [28] Further, Mr. Edwards explains the reasons for the delay in filing the claim. He states that despite several requests by Mr. Noel to obtain a medical report from the St. George's General Hospital pursuant to CPR 8.9, the hospital refused to provide the medical report. Therefore, Mr. Edwards urges the court to refuse the defendant's limitation pleading that the claim is statute barred. He submits that the defendant cannot rely on its limitation pleading when it contributed to the delay process by refusing to produce the medical report.

Defendant's further submissions

- [29] As it relates to section 2 of the Act, learned Solicitor General, Mrs. Reid-Ballantyne submits that the limitation as set out in the Act is much shorter than the limitation period in the Limitation of Actions Act⁹. Counsel refers to **Alves v Attorney General**¹⁰ where the Privy Council reviewed a number of leading cases in relation to the Act before giving its conclusions at paragraphs 35-37 as follows:

"35. Although the many conflicting decisions on Public Protection Acts cannot all be reconciled, the Board is satisfied that the principle which properly underlies the statutes can be extracted from *Bradford Corp'n v Myers*, and particularly from the speech of Lord Shaw, having been accurately foreshadowed by Farwell J in *Sharpington*. It lies in the oft-repeated proposition that the essential test lies in the difference between a public duty owed to the public generally and a private duty incurred in the course of acting under statutory enabling. The Acts were clearly passed, as Lord Shaw said in *Myers*, to protect public authorities from late challenges to the exercise of their statutory functions. That was considered desirable, no doubt, to protect annual budgets from having to be adjusted in subsequent years, and no doubt similar considerations applied to the desirability of policy decisions not being exposed to delayed assaults...

⁷ (1986) 44 WIR 295

⁸ (1997) 51 WIR 280

⁹ Cap. 173 of the 2010 Continuous Revised Edition of the Laws of Grenada

¹⁰ [2017] UKPC 42

36. By contrast, where there is a general common law or statutory duty of the kind which is the same for a public authority as it would be for a non-public person or company, there is no reason for a much-abbreviated limitation period, indeed every reason why the period should be no different for a public body defendant as for anyone else. The duties of an employer to his employees, or of a transport undertaker to his passengers, or of any contractor to his contractual counterparty, are classic examples of particular duties. They may of course arise in the course of performing public functions, but they are not public duties owed generally to the world or to a section of the public.

37. Despite the potentially wide words of PAPA, it must, as has consistently been held, be construed restrictively. It only applies to public authorities, and not to all persons acting under statutory authority. It does not apply to all actions performed by public authorities, but only to those where the obligation sued upon is owed generally to the public or to a section of it. Where the obligation sued upon arises simply out of a relationship with the claimant which would be the same for any non-public person or body, and where there is no question of a public law challenge, the Act has no application. The duty of care which the government is admitted to have owed to Mrs Alves *qua* employer was accordingly a private obligation exactly the same as is owed by any employer, and not a public obligation for the purposes of PAPA. The six month limitation period did not apply.”

[30] Mrs. Reid-Ballantyne submits that, having regard to the pronouncements in **Alves**, the test is whether the duty performed is one which is owed to the public at large and not one which would be the same for any other private person. Further, counsel relies on the case of **Bryan v Lindo**¹¹, where the Jamaican Court of Appeal considered the application of the Act to the case of a member of the Jamaica Defence Force, who unlawfully shot a suspect in custody. Counsel notes the pronouncements made by the court at pages 302 and 305 of the judgment, in particular the following passage:

“In the instant case, on the facts found by Downer J on the evidence before him, this was a case of deliberate and gratuitous shooting of the plaintiff, for no other reason than that the defendant was responding to the jeering of the police personnel present. It was not an act done in pursuance, or execution, or even intended execution of any law, or public duty, or authority. It was clearly a case in which the defendant was using his pretended authority for some improper motive, whether spite, or for a purpose entirely outside the statutory or other justification.”

¹¹ (1986) 44 WIR 295

- [31] Therefore, counsel submits that for the Act to apply, Officer Augustus must have been actually acting in the execution of his statutory or public duties and he must not have been acting for an improper purpose or for a purpose entirely outside of the statute.
- [32] Counsel referred the court to two other authorities on the applicability of the Act in the instant case, which are **John-Ross Registe v Police Officer Mervin Charles and others**¹² and **Mario Matthew v The Commissioner of Police and another**¹³. The court in **John-Ross Registe** considered a claim for assault and battery, false imprisonment and malicious prosecution arising out of the claimant's arrest and detention after being issued a ticket at a traffic stop. The claimant was arrested for his failure to give his name to the arresting officer, an offence for which he was charged, prosecuted and found not guilty. The claimant was injured during his arrest and detention. The court found that the arrest was unlawful since there was no requirement in law for a person to give their name and address for the purpose of a traffic ticket.
- [33] Mrs. Reid-Ballantyne commends paragraphs 66 to 69 of that judgment to this court. In addition to above, counsel relies on paragraphs 18-21 and 28 and 29 of the judgment in **Marion Matthew**. Mrs. Reid-Ballantyne explains that based on the foregoing authorities, if the police officer at the time of the alleged incident was actively performing a statutory or public duty, then the claim would be caught within the time limit prescribed by the Act and will be statute barred.
- [34] As it relates to the police's power of arrest, counsel further explains that pursuant to section 22(1) of the Police Act, the police have jurisdiction throughout Grenada to make arrests. In addition to that section, counsel points out that section 54 of the Criminal Code provides grounds on which force or harm may be justified, within prescribed limits. Counsel posits that the conjoint effect of section 22(1) of the

¹² [2014] ECSCJ No. 326

¹³ [2015] ECSCJ No. 137

Police Act and section 54 (c)(d)(e)(f) of the Criminal Code, provide the police officer not only with the statutory power to arrest a suspect but also to use such reasonable force as is necessary to carry out that arrest.

[35] Counsel directed the court to Mr. Noel's evidence where he alleges that Officer Augustus was allegedly pulling him out of the vehicle in order to arrest him. Counsel's position is that, taken at its highest, it is not in dispute that Mr. Noel was arrested by Officer Augustus and charged with 3 offences on 28th April, 2009 and that Mr. Noel's injuries occurred during his arrest. As such, she continues, it is clear that the matter of which Mr. Noel complains occurred while Officer Augustus was acting in the execution of his duty to arrest persons who are suspected of committing crimes.

[36] In the premises, Mrs. Reid-Ballantyne concludes that the provisions of section 2 of the Act apply and as such the claim, having been filed on 12th November 2014 more than five years after the events occurred on 28th April 2009, is statute barred.

Discussion

[37] In the Jamaican Court of Appeal case of **Bryan v Lindo**¹⁴, Carberry JA provided useful guidance in determining whether a public authority can rely on the **Public Authorities Protection Act**. His Lordship stated at pages 301-302 of the judgment that:

"In cases where the Act is pleaded, three questions arise for determination: (1) is the person or body claiming the protection of the Act a 'public authority' within the Act? (2) is the act which is complained of one that falls within the protection of the Act? (3) if so, from what date does the time period indicated in the Act run?"

This brings us to the second question: was the act complained of one that fell within the protection of the Act? **It is not every act which a public authority does that is protected by the Public Authorities Protection Act. The Act protects only acts done in pursuance, or execution, or intended execution of any law, or public duty, or authority.** In *Bradford*

¹⁴ (1986) 44 WIR 295

Corporation v Myers [1916] AC 242 at page 247 Lord Buckmaster LC observed:

'...the words of the section themselves limit the class of action, and show that it was not intended to cover every act which a local authority had power to perform.

'In other words, it is not because the act out of which an action arises is within their power that a public authority enjoys the benefit of the statute. It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority.' (Emphasis added)

[38] Among the authorities presented by the defendant, the learned Solicitor General, counsel for the defendant relies on **Alves v Attorney General**¹⁵ in relation to her submissions on whether section 2 of the Act is applicable in this case. With respect to learned counsel I would say that while the discussion in **Alves** is elucidatory, I would prefer to apply the dicta cited above from **Lindo** to dispose of the issues in this case. The discussion on the ambit of the Act in **Alves** concerned whether Ms. Alves' employer was a public authority as contemplated by the Act. The Privy Council ruled that the duty owed to Ms. Alves arose out of private obligation and was not a public obligation. In this case, there is no dispute that Officer Augustus was executing a public function further to a statutory power or duty to make an arrest. What is in dispute is whether the action of Officer Augustus falls within what the court in **Lindo** refers to as an act that is **"...one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority."**¹⁶

[39] Mrs. Reid-Ballantyne in her further submissions submits, correctly in my view, that for the "Act to apply, Officer Augustus must have been actually acting in the

¹⁵ [2017] UKPC 42

¹⁶ Lord Hughes in *Alves v AG* [2017] UKPC 42 at para. 21 quoting Lord Buckmaster LC in *Bradford Corporation v Myers* [1916] 1 AC 242

execution of his duties and he must not have been acting for an improper purpose or for a purpose entirely outside of the statute.”¹⁷

[40] I have already found Officer Augustus’ actions were not governed by any basis in law. There was no lawful basis for the arrest and subsequent actions to effect the arrest which amounted to an assault. Officer Augustus purported to act in accordance with statute but as I have found, those actions were not executed in furtherance of any statutory obligation or power since there were no such power or obligation to act in the manner that he did on the day in question. Accordingly, section 2 of the Act is not applicable in this case.

Damages for assault and battery

Mr. Noel in his statement of case did not plead and particularise any special damages. Therefore, no award can be made for special damages. In relation to general damages, counsel for Mr. Noel, Mr. Deloni Edwards in his closing submissions submitted the cases of **Yohanna George v Vernon M O’Brien and Another**¹⁸ and **Desmond Honore v Henson Sayers and Another**¹⁹. Counsel for the defendant in her closing submissions commended the court to the cases of **Helious Trocard v Nigel Edmund and Another**²⁰ and **Winston Mc Millan v Clifren Warren and others**²¹. I accept Mr. Noel’s evidence that some degree of force was used to remove him from the bus during the execution of the arrest by Officer Augustus.

Expert medical evidence

¹⁷ Defendant’s further submissions filed on 17th March 2022 at paragraph 8

¹⁸ DOMHCV2010/0013

¹⁹ GDAHCV2014/0473

²⁰ [2010] ECSCJ No. 126

²¹ [2015] ECSCJ No. 231

[41] The court ought to be provided with some proof or evidence that Mr. Noel suffered injuries as a result of the use of force in order to aid an assessment of Mr. Noel's claim for general damages for assault and battery. Mr. Noel did not adduce any medical report outlining the nature and extent of his injuries. What he tendered were copies of sick leave forms, an NIS sickness benefit claim, copies of receipts for medical examinations and other purchases and a copy of a photograph depicting his arm in a cast.

[42] Counsel for the defendant, Mr. Edwards, in his closing submissions, prays that Mr. Noel ought not to be prejudiced by the absence of his medical report and relies on the cases of **Kyron Charles v The Attorney General**²², **The Attorney General of Virgin Islands v Daphne Alves**²³ and **Bradford Corporation v Myers**²⁴. However, I observe that those cases were determined prior to the Privy Council's decision in **Bergan v Evans**²⁵, where Lord Briggs made pronouncements on the tendering of expert medical evidence.

[43] Lord Briggs in **Bergan v Evans** stated at paragraph 33 that:

“Deployment of expert evidence is governed by r 32.6, and is subject to the court's control of case management.”

And His Lordship continued at paragraph 37:

“The practical outcome of this appeal, in relation to Dr Laws' evidence, is therefore that permission to deploy his evidence is still required under rule 32.6 but that obtaining it, even at this late stage, ought to be a formality.”

[44] In essence, Lord Briggs' comments suggest that where a party intends to rely on medical evidence to prove the nature and extent of their injuries they must first seek permission from the court under CPR 32.6 to adduce the medical evidence. In this case, Mr. Noel did not seek permission from the court under CPR 32.6(1) to adduce the medical evidence of Dr. Sonia Johnson. Therefore I am unable to fully assess

²² GDAHCV2016/0017

²³ BVIHCVAP2011/0065

²⁴ (1916) 1 AC 242

²⁵ [2019] UKPC 33

the nature and extent his injuries in the absence of expert medical evidence. Notwithstanding the above, Mr. Noel is not without relief. The law on damages for assault and battery is well settled. Where the purported arrest is unlawful, damages flow directly from the unlawful act. In essence, damages for assault flow from the unlawful action since trespass to person is actionable per se²⁶.

[45] I accept on a balance of probabilities that Mr. Noel suffered injuries during his arrest when he was forcibly removed from the bus by his arm. In the absence of medical evidence, as indicated above, I am unable to fully assess the extent of his injuries. However, even though the lack of medical evidence may affect the court's ability to quantify the loss, it is the court's duty to recognise it with an award of compensation²⁷. In the **Attorney General of Grenada v Muhammed Ehsan**²⁸, Blenman JA stated at paragraph 122 of the judgment that: *"it is well-established that the judge, in seeking to award compensation, must pay particular regard to the evidence that was adduced. Where the evidence is scant or non-existent to support an award of compensation or damages, the judge is usually able to make a nominal award so as to vindicate the person's rights"*²⁹. I therefore award Mr. Noel nominal damages for assault and battery in the sum of \$15,000.00.

Conclusion

[46] It is hereby ordered that:-

- (1) Judgment is entered for the claimant.
- (2) The defendant shall pay to the claimant damages for assault and battery in the sum of \$15,000.00.
- (3) The defendant shall pay costs to the claimant in the sum of \$5000.00.

²⁶ Per Belle J in *Danny Severin v The Attorney General* SLUHCV2008/0973 at para. 52

²⁷ Per Sir Andrew Leggatt in *Greer v Alstons Engineering Sales & Services Ltd* (2003) 63 WIR 388 at para. 9

²⁸ GDAHCVAP2019/0020

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar