

**THE EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: BVIHCV2020/0098

BETWEEN:

CARDON JOHNNY

Claimant

and

**THE ATTORNEY GENERAL OF THE BRITISH VIRGIN ISLANDS
SERGEANT DONNA MONSANTO
SERGEANT COLLINS FRAZER**

Defendants

Appearances:

Mr. Jason Hamilton for the Claimant

Mr. Christopher Forde, Crown Counsel, for the Defendants

2021: May 19
June 16

JUDGMENT

[1] **GILL, M.:** This is an assessment of damages for compensation sought by the claimant for treatment meted out to him by police officers acting in the execution of their duties. The 2nd and 3rd defendants are members of the Royal Virgin Islands Police Force and the Attorney General is sued as representative of the Crown pursuant to the Crown Proceedings Act.¹ By claim form and statement of claim filed on 3rd June 2020, the claimant seeks the following relief:

¹ Cap. 5.06 of the Revised Edition of the Laws of the Virgin Islands

1. Damages for false imprisonment
2. Damages for unlawful arrest
3. Damages for unlawful search of the claimant's person and his mobile telephone
4. Damages for unlawful seizure of his mobile telephone
5. Aggravated damages
6. Special damages
7. Costs
8. Interest
9. Such other relief as the court may find just.

[2] By ruling of Master Ricardo Sandcroft (Ag.), the claimant obtained judgment in default against the 1st and 3rd defendants on 24th September 2020. As to the 2nd defendant, the claimant did not proceed with his application to strike out the defence and/or for summary judgment, and given the concession of the claimant, it was agreed that the court should proceed to assessment of damages against all three (3) defendants.

Background facts

[3] The claimant, Cardon Johnny, is a body repair mechanic employed at E & C Motor Shine located at Sea Cow's Bay on the island of Tortola. On the morning of 16th October 2019, he was at International Motors at Fish Bay when he received a telephone call that there were police officers at his workplace looking for him. On his arrival at the shop at about 10:00 a.m., three (3) police vehicles approached the shop. Four (4) police officers came out and addressed him.

[4] The 3rd defendant, Sergeant Collis Frazer, told him that they were looking for someone named Cardon Johnny. He identified himself as Cardon Johnny. The officer identified himself as Detective Frazer and informed Mr. Johnny that he needed to search him. Detective Frazer then instructed him to go against the wall. Mr. Johnny complied. Detective Frazer carried out a search of Mr. Johnny's pockets and his body. He took Mr. Johnny's mobile telephone and began searching it without his consent. At no time was a warrant shown or read to Mr. Johnny relative to the search of his person or the search of his mobile telephone.

- [5] The 2nd defendant, Sergeant Donna Monsanto, informed him that he was being arrested for theft of a Suzuki Grand Vitara. Mr. Johnny told her he had no knowledge of the allegation and asked her for the year of the vehicle she was looking for. She told him she knew what she was looking for.
- [6] Detective Frazer then placed Mr. Johnny in handcuffs and he and other officers searched the vehicles on the compound of his workplace without his permission. One of the female officers informed him that they had a warrant but none was produced or read to him. Detective Frazer asked for the keys for the vehicles and took them off the workbench. Sgt. Monsanto told Mr. Johnny that they were looking for records and the officers proceeded to search a Hyundai Tucson and a Honda CRV.
- [7] Sgt. Monsanto asked Mr. Johnny the whereabouts of the Suzuki Grand Vitara he drove. He told her he sold that vehicle a few days earlier. She asked him for the paperwork. He told her it was probably in one of the vehicles he was driving. Sgt. Monsanto, Detective Frazer and the other officers searched the vehicles in the yard but found no paperwork.
- [8] Sgt. Monsanto then told Mr. Johnny that they had a warrant and could break into the rented premises he occupied near his workplace to search for the paperwork. He told her she could call the landlord to gain access to the house.
- [9] The landlady, Eulinda Cox, was called. She was not at home at the time but proceeded to her residence where Mr. Johnny lived as well. Eulinda Cox is also the owner and manager of E & C Auto Shine and Mr. Johnny's employer. At the premises, Sgt. Monsanto and Detective Frazer spoke with Ms. Cox. Sgt. Monsanto showed her a document and told her she wanted to retrieve certain documents from her house regarding a Suzuki Grand Vitara that Mr. Johnny purported to own. Mr. Johnny, who at that time was in a police vehicle, exited the vehicle handcuffed behind his back and told Ms. Cox where to find the documents.
- [10] Ms. Cox got the documents from the house and handed them to Sgt. Monsanto. Sgt. Monsanto and Detective Frazer checked the paperwork and said that it did not correspond with what they were looking for. Sgt. Monsanto then told Mr. Johnny that they were taking him to the station for further questioning.

- [11] The vehicle in question was a white 2014 Suzuki Grand Vitara. Mr. Johnny bought that vehicle on 12th July 2019 from one Jerome Hamm dba Jerry's Car Rentals and sold it to one Kirbin Smith on 15th August 2019.
- [12] The paperwork, which Sgt. Monsanto and Detective Frazer examined, clearly showed the change of ownership from the Department of Motor Vehicles, that Mr. Johnny bought and sold the vehicle. It also showed the insurance certificate of the vehicle in his name, along with the sales and purchase receipt from Jerry's Car Rentals.
- [13] Mr. Johnny was transported to the Road Town Police Station in handcuffs. On arrival at the station, he was placed in an unsanitary cell at which time the handcuffs were removed.
- [14] On arrival at the station, he told the officer present that he suffered from migraine headaches and if he did not eat on time, he would experience such headaches. He remained in the cell until about 5:30 p.m. that day when he was released. During his detention, which began about 10:00 a.m. when he was arrested, he was not offered any meals or anything to drink.
- [15] At no time was Mr. Johnny questioned by any officer at the station. He was not charged with any offence relating to the alleged investigation.
- [16] Following his release, Mr. Johnny sought medical attention at B & F Medical Complex for his swollen wrists resulting from the tightness of the handcuffs. As a result of the injuries to his wrists, he was unable to work for five days and sustained loss of earnings for that period.
- [17] Mr. Johnny's attorneys sent a letter to the defendants on his behalf seeking redress but the letter went unanswered. He resorted to the court for relief.
- [18] Mr. Johnny avers that he is a person of good character and has never been arrested for any criminal offence. He states that as a law-abiding citizen, he was embarrassed and ridiculed by the actions of the police without justification and in the presence of his co-workers and clients and he feels ashamed to say the least.
- [19] The evidence of Mr. Johnny is uncontroverted. Whereas the defendants filed a Form 31 notice indicating that they would cross-examine Mr. Johnny and Ms. Cox, and that they would rely on

witness statements of Sgt. Monsanto and Detective Frazer, no statements were filed and Crown Counsel opted not to cross-examine Mr. Johnny or his witness.

Issue

[20] The court must determine the quantum of damages to be awarded to Mr. Johnny.

False imprisonment and unlawful arrest

[21] Learned Counsel for Mr. Johnny, Mr. Hamilton, submitted that a sum in the region of EC\$75,000.00 should be awarded to him under this head. Learned Crown Counsel, Mr. Forde, on behalf of the defendants, argued that this award should not exceed US\$20,000.00 (approximately EC\$54,000.00). The parties are therefore about EC\$20,000.00 apart (about US\$7,400.00).

[22] For guidance in this area of the law, both sides directed the court to the Trinidad and Tobago case of **Millette v McNicolls**² where de la Bastide CJ stated:

“There is no doubt, that there must be an element of initial shock when a person is first arrested and imprisoned. This is an element which must be taken into account and compensated for in any assessment of damages for wrongful arrest and false imprisonment, regardless of whether the imprisonment is long or short. The extent of the compensation for this will depend on the particular facts of the case. Certainly, the way in which the arrest and initial imprisonment are effected, the publicity which attends to them, the affront to the dignity of the person, all of these factors determine the size of the element that is referable to that. It has nothing to do with the length of the subsequent imprisonment.”

[23] The basis for Mr. Hamilton’s submission for an award of EC\$75,000.00 is to be found in **Matthew McMillan v Alonzo Carty and the Attorney General of Saint Kitts and Nevis**³ in which Ventose J. awarded that sum to the claimant for false imprisonment and wrongful arrest. In that case, the claimant was detained at the airport, taken to a police station, and kept in custody for about 9 hours. He was arrested for an offence unknown to law - “invasion of privacy” - involving a drone operated over someone’s home. The court found that the 1st defendant, an Inspector of Police, did not have an honest belief or reasonable suspicion that the claimant had committed an offence, that there was no evidence on which a reasonable third person would suspect that the claimant had committed an

² (2000) 60 WIR 362 at 367

³ SKBHCV2017/0380, delivered October 28, 2019

offence, and that the Inspector took irrelevant considerations into account when he made the decision to arrest the claimant.

[24] Mr. Hamilton pointed out that in the present case, Mr. Johnny was restrained for a period of about 8 hours and in handcuffs for about half of that period, so that an award of a like sum as that awarded in **Matthew MacMillan** is fair and reasonable given the reprehensible nature of the officers' actions and conduct.

[25] On behalf of the defendants, Mr. Forde highlighted the recent decision of the Court of Appeal in **Wakeem Guishard v The Attorney General of the British Virgin Islands**⁴ in which the Court approved the approach of Moise M. (as he then was) in awarding the sum of US\$20,000.00 as compensation to the appellant for the initial or 'shock period'. At paragraph 39 of the judgment, Farara JA (Ag.) detailed as follows:

"This first element of 'initial shock', is to take account of the manner in which the appellant was arrested, his initial imprisonment, the conditions under which he was detained, any harsh or inhumane treatment meted out to him at the hand of police officers, any undue publicity attendant with his arrest and detention, and any affront to his dignity. The amount of compensation for this element would naturally depend upon the particular facts and circumstances of each case and the quantum of any comparable awards for initial shock."

[26] The appellant Wakeem Guishard was arrested at his home on suspicion of murder and taken to a police station where he was placed in a cell. He was charged with murder the next day after being questioned by the police. He contended that he suffered several indignities at the hands of the police, including being placed in cells with plywood beds. He was kept in custody for 24 hours and he was not allowed to have a shower and had nothing to eat. He was then brought before a magistrate and remanded.

[27] Mr. Forde explained that the second step approved by the Court of Appeal in **Wakeem Guishard** in assessing damages for unlawful arrest and false imprisonment is the compensatory damages to be awarded for the remaining days of the claimant's unlawful incarceration. Counsel posited that this appears to be precedent on the claimant being incarcerated for a period of more than one day.

⁴ BVIHCVAP2018/0006, delivered October 2, 2020

- [28] Mr. Forde submitted that the circumstances in the current case do not exceed those in **Wakeem Guishard**. Counsel explained that Mr. Guishard was arrested on the serious charge of murder. In this case, Mr. Johnny was arrested in the course of an investigation into a stolen vehicle. Further, Counsel called the court's attention to the fact that Mr. Johnny was kept in custody for "only" seven and a half hours. For these reasons, Mr. Forde contended that the award for damages for false imprisonment and unlawful arrest should not exceed the sum of US\$20,000.00 which was awarded to Wakeem Guishard.
- [29] The court ought to make a determination considering comparable awards. EC\$20,000.00 for 6 hours and EC\$25,000.00 for 9 hours of false imprisonment were the awards made in 2008 to the claimants in **Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica**.⁵ In 2013, the court awarded \$10,000.00 for 3 hours false imprisonment in deplorable conditions at a police station in **Malcolm Payne v Chief Magistrate et al.**⁶ An award in similar circumstances to the facts in these authorities, which are of some vintage, must be uplifted taking inflation into account.
- [30] In making an award in this case, I consider the detention of Mr. Johnny in view of his co-workers, the uncalled-for taking of Mr. Johnny to the police station after the documents retrieved from his residence confirmed that he had not stolen the vehicle under investigation, the period of seven and a half hours of detention, half of that time in handcuffs, the unsanitary conditions he had to endure in the cells, the neglect to provide food and drink to him even after he informed an officer of the need for him to eat on time to avoid a migraine headache, and the fact that he was released without being questioned, which undermines the need for his detention.
- [31] I am persuaded by the argument of learned counsel for the defendants that this case should not attract an award greater than that awarded to the claimant in **Wakeem Guishard**. Whereas **Matthew McMillan** provides precedent for an award of EC\$75,000.00, the sum of US\$20,000.00 in **Wakeem Guishard** awarded by the learned master, was confirmed more recently, and in this very jurisdiction of the British Virgin Islands. In my view, the circumstances in the case of Mr. Johnny are not more aggravating than the situation experienced by Mr. Guishard. Therefore, I award Mr. Johnny US\$20,000.00 in general damages for false imprisonment and unlawful arrest.

⁵ DOMHCV2006/0038

⁶ ANUHCV2001/0261

Unlawful search and seizure

- [32] Learned counsel Mr. Hamilton urged the court to award a similar amount to the sum of EC\$13,000.00 (approximately US\$4,800.00) awarded to the claimant in **Matthew McMillan** for the unlawful search and seizure of his property. Mr. McMillan's bags were searched twice. His USB devices, laptop and two mobile phones were taken away from him for over five hours without a warrant. In the instant case, Mr. Johnny's evidence is that Detective Frazer searched his body and pockets and took his mobile phone and searched it without his permission. It is not stated in the evidence how long the officer kept the phone. There is no indication as to when it was returned to him. There is also no evidence that the phone was taken out of Mr. Johnny's view. In the circumstances of this case, a fair and reasonable award for unlawful search and seizure is US\$2,500.00, and I so award.

Aggravated damages

- [33] Mr. Johnny seeks EC\$45,000.00 (equivalent to US\$16,650.00) under this head. The defendants suggest US\$7000.00.

- [34] In relation to an award for aggravated damages, **McGregor on Damages**⁷ explains:

"In certain torts, particularly those of defamation, false imprisonment and malicious prosecution, the measure of damages may be affected by the conduct, character and circumstances of both claimant and defendant. These factors are said to go in aggravation or mitigation of the damage. Thus the damage is most commonly aggravated, and the damages correspondingly increased, by the defendant's bad motives or wilfulness ...The damage may also be aggravated by reason of the good character and reputation of the claimant..."

- [35] I am also guided by Lord Devlin in the leading authority of **Rookes v Barnard**⁸ where His Lordship had this to say:

"Moreover, it is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury may take into account in assessing the appropriate compensation."

⁷ McGregor on Damages (18th ed.) at paragraph 7-009

⁸ [1964] UKHL 1 at 34

[36] Mr. Hamilton posited that considering the very conduct of the police such as restraining Mr. Johnny in handcuffs for an extended period, arresting him unlawfully in the presence of customers and workmates, searching his person and property without a warrant or reasonable excuse to do so, and detaining him in an unsanitary cell without water or food, the officers, being servants of the people, their conduct was oppressive, and the court ought to demonstrate its disapproval of such actions.

[37] On this issue, Mr. Forde referred the court to the case of **Shannoid Bass v Sergeant Venesia Williams and The Attorney General of St. Kitts and Nevis**.⁹ There, the claimant was detained by police for several hours for an allegation that he had failed to comply with orders given by a high-ranking police officer. The court considered, as submitted on behalf of the claimant, that the claimant was placed in a cell, he was arrested in front of a large crowd and was escorted to the police station by armed police officers. The court further considered that the claimant was arrested for a non-arrestable offence, the fact that he had a good reputation as a teacher, and the manner in which a search was carried out on him which included the removal of his underwear. Thomas J. (Ag.) found that being placed in a cell when he did not resist arrest was central to the aggravation caused. The claimant was awarded EC\$10,000.00 for aggravated damages.

[38] I note that in the **Matthew McMillan** case, heavily relied on by the claimant in this matter, Ventose J. awarded the claimant the sum of EC\$25,000.00 for aggravated damages.

[39] Given Mr. Johnny's uncontroverted evidence of aggravation including that he is of good character, that he felt embarrassed, ridiculed and ashamed at the unjustified actions of the police, and taking into consideration the authorities provided by both sides, I agree with the submission on behalf of the defendants that the sum of US\$7,000.00 suffices as reasonable compensation for aggravated damages in this case, and I so award.

Special damages

[40] Mr. Johnny claims US\$3,500.00 for loss of wages for five days and US\$37.00 for the cost of medical treatment, a total of US\$3,537.00. The defence consented to this amount. Therefore, I award the claimant special damages in the said sum of US\$3,537.00.

⁹ SKBHCV2010/0312

Order

[41] Based on the foregoing, I order the following to be paid to the claimant:

- 1) Special damages in the sum of US\$3,537.00.
- 2) Damages for false imprisonment and unlawful arrest in the sum of US\$20,000.00.
- 3) Damages for unlawful search and seizure in the sum of US\$2,500.00.
- 4) Aggravated damages in the sum of US\$7,000.00.
- 5) Pre-judgment interest at the rate of 3 per cent per annum on the global sum from the date the claimant was released from police custody, 16th August 2019, to the date of this assessment, 16th June 2021.
- 6) Interest on the global sum at the rate of 5 per cent per annum from the date of assessment until payment in full.
- 7) Prescribed costs in the sum of US\$4,998.33.

Tamara Gill
Master

By the Court

Registrar