

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

REGULAR JURISDICTION

2018- HC-DEM-CIV-SOC-5

BETWEEN:

In the matter of an Application by STORM FAUSETTE, SHAQUILLE FAUSETTE, SHAKEIF FAUSETTE, minor represented herein by his father and next friend STORM FAUSETTE and Daryl Medas.

In the matter of Article 40, Article 139, Article 141, 142(1) and Article 153 of the Constitution of the Republic of Guyana 1980 as amendments thereto.

-and-

- (1) STORM FAUSETTE
- (2) SHAQUILLE FAUSETTE
- (3) SHAKEIF FAUSETTE, minor represented herein by his father and next friend STORM FAUSETTE
- (4) DARYL MEDAS

Applicants Jointly and
Severally

-and-

1. The Attorney General of Guyana
2. Commissioner of Police in the person of LESLIE JAMES
3. Detective Watson
4. Officer Semple

Respondents Jointly and
Severally

Appearances

Ms. A. Sanford for the Claimant

Ms. L. Noel for the Defendants

Decision of the Honourable Madame Justice Priya Sewnarine-Beharry dated 5th October, 2020

1. On 30th January, 2018, the First Claimant accompanied by his brother took his son, the Second Claimant to School of the Nations to pay fees. They then proceeded to China Trading in Robb Street, Georgetown where they purchased floral supplies for the First Claimant's business. Around 2:30 pm the First Claimant picked up the Third Claimant, a younger son aged five from New Guyana School. The First Claimant then dropped off his brother, the Second and Third Claimants at the home of the Fourth Defendant situate at 524 Kisskadee Drive South Ruimveldt Gardens and proceeded to Festival City to meet one Mr Richardson. He then returned to the Fourth Claimant's home collected his children and proceeded towards their home at Diamond along the East Bank Demerara in PTT 2261. Whilst in the vicinity of Industrial Site they were intercepted by a party of policemen including the Third and Fourth Respondents.
2. The persons of the First and Second Claimants were searched while the Third Claimant remained in the car. The car was subsequently searched. Nothing of evidential value was unearthed by the searches.
3. The Police instructed the First and Second Claimant to hand over their cell phones and they complied.
4. The First Claimant was then instructed to retrace the stops he made earlier that day and to drive to the home of the Fourth named Claimant. On arrival, the home and car belonging to the Fourth Claimant were searched. The persons of the Fourth Claimant and two male occupants of the home were also searched. The searches again revealed nothing of evidential value and their cell phones were seized.
5. Subsequently, the Third Claimant was dropped off at his grandmother and the First, Second and Fourth Claimants were taken to East La Penitence Police Station, CID Eve Leary and eventually to the Diamond Police Station.

6. At the Diamond Police Station, the First, Second and Fourth Claimants were placed in the lockups, a dark cubicle measuring 6 x 9 feet which carried a strong stench of human waste and filth of faeces and urine.
7. When asked by the First and Second Claimants the reason(s) for their detention, the police gave varying answers such as “it was a normal stop and search”, “police got dem wuk to do” and “it is a pending investigation.”
8. When the Fourth Claimant enquired why his home was being searched without a warrant the police responded, “we is de police and we could search ya house” and “we got orders from the bigger ones to search this house.”
9. The First, Second and Fourth Claimants’ numerous requests to communicate with their lawyer and the Second Claimant’s request for refreshment as he had not eaten for the day were denied by the Police. The Claimants were only able to communicate with their lawyer around 10 pm that night.
10. According to the Claimants account, the Police behaved in a most disrespectful, uncouth and unprofessionally manner. The details will be related later in this judgement.
11. The Second Claimant was released on bail on 31st January 2018 and instructed to present himself the following day at Brickdam Police Station to be placed on an identification parade. On 1st February 2018 before the First, Second and Fourth Claimants could be placed on identification parades the First Claimant fainted and had to be rushed to the St. Joseph’s Mercy Hospital.
12. The First and Fourth Claimants were released on Bail later that afternoon.
13. The Claimants were never charged for any offence.
14. The Claimants claim that their arrest was unlawful and unjustified and that they have suffered embarrassment, loss and damage.
15. The Claimants filed this Claim seeking:
 - A declaration that their fundamental rights guaranteed by Articles 139(1), 141 and 142 the Constitution were violated by the Defendants;
 - Damages for wrongful deprivation of liberty;
 - Damages for inhuman and degrading punishment;

- Aggravated/ Exemplary Damages in excess of 10,000,000 for false imprisonment.
 - Costs
16. On October 25, 2019 in the presence of both Counsel for Claimants and Defendants the trial was fixed for the 10 and 11th February 2020 at 9 am. On the 10th February 2020, the Claimants were present but there was no appearance by or for the Respondents. The Claimants took the stand, adopted their witness statements as their evidence and tendered as exhibits original bail receipts and a copy of the Power of Attorney executed by the Fourth Claimant in favour of the Second Claimant. The trial then concluded. To date neither the Respondents nor their Counsel has communicated to the Court any reason(s) for their absence at trial. Additionally, no queries were made in relation to the matter.
17. The issues that fall for determination of this court are:
- (1) Whether the Claimants fundamental rights guaranteed under Articles 139(1), 141 and 142 were contravened;
 - (2) If so, what measure of damages should be awarded to the Claimants for the contravention of those rights?
18. False imprisonment arises where a person is detained against his will without legal justification. The burden is on the Claimants to prove the fact of their imprisonment and then shifts to the person effecting the arrest to justify imprisonment. The fact that the Claimants were detained by the police on 30th January 2018 is undisputed; The facts that the Second Claimant was released on bail on 31st January 2018 while the First and Fourth Claimants were released on Bail on the 1st February 2018 are undisputed. The fact that the Third Claimant was released in his grandmother's care shortly before the First, Second and Fourth Claimants were taken to the East La Penitence Police Station is also undisputed.
19. It is for the Respondents to show that the Claimants' detention was justified. While the Respondents were absent from trial, their purported justification for the Claimants' arrest and detention can be found in their Defence.
20. The Defendants contended in paragraphs 6 to 9 of their Defence that due to a spree of robberies committed on persons leaving the Bank of Nova Scotia, the Robb Street

- area was under surveillance by ranks from the Special Branch Unit. Further when persons are seen acting in a suspicious manner ranks from the Special Branch will trail the intended person(s)/vehicle(s) at a distance and relate the information to the Operations Room which would then relate the information to the closest patrol in the vicinity. The patrol would then intercept the suspected persons/vehicles and conduct searches on their persons, vehicles and homes. The suspects will then be detained, profiled, interviewed and possibly placed on an identification parade.
21. In paragraph 10 and 11 they further contended that on 30 January 2018, pursuant to information ranks from the Special Branch were conducting surveillance on the Bank of Nova Scotia in the vicinity of Robb Street when the First Claimant and the occupants *were seen acting in a suspicious manner* in the vicinity of the bank. As a result they were trailed and intercepted at Industrial Site Ruimveldt. These averments were repeated in paragraph 5 of the Third Respondent's witness statement and paragraph 4 of the Fourth Respondent's witness statement. The Respondents admitted that they stopped, searched, arrested and detained the Claimants and took their property into custody for continuing investigations. Neither the Defence nor the witness statements of the Defendants addressed the First, Second and Fourth Claimants contentions that they were subject to inhuman and degrading punishment as set out in paragraphs 61 and 62 of their Statement of Claim which is summarised in paragraph 6 of this judgement.
22. In the case of **Navindra Singh vs. Police Constable Benjamin 11712** 2006 No 602/W DEM, Justice Ramlal examined the powers of the police to stop, search, arrest and detain under sections 17 & 19 of the Police Act Cap 16:01. He found that that reasonable suspicion was a pre-condition to the exercise of any power under Sections 17 or 19 of the Police Act. At page 4 of his judgement he said:
- ““**reasonable suspicion**” is a pre-condition to the exercise of any power under S 17 or S 19 of the Police Act and this is so even where the law authorises the search or arrest without a warrant. This must necessarily be so since every person has the fundamental right to liberty, protection from inhuman treatment, protection of deprivation of property, protection against arbitrary search of entry, protection of law...and other fundamental rights as prescribed in Articles 138 to 152 of the Constitution of Guyana which is the Supreme Law and reigns supreme over all Statutory law. Further to this, the Constitution by virtue of Article 139(1) (e) expressly provides that no person

shall be deprived of his liberty except upon “**reasonable suspicion**” of his having committed or being about to commit a criminal offence under the Laws of Guyana. *It is therefore mandatory for the police to have “reasonable suspicion” of the commission of a criminal offence before any power to stop, search, arrest and detain any person can be exercised.*”

23. The learned judge then went on to say the test as to what amounts to reasonable suspicion had been laid down by the Courts to be an objective one. The officer must consider all the circumstances including time and the behaviour of the person concerned. He said further that “the test as to whether reasonable grounds for the suspicion existed so as to justify an arrest is partly subjective, in that the arresting officer must have formed a genuine suspicion that the person being arrested was guilty of an offence, and partly objective in that there had to be reasonable grounds for forming such a suspicion provided that a reasonable man having regard to all the circumstances would regard them as reasonable grounds for suspicion. (see Archbold 2001 ed Para. 15-24). Further, a mere order from a superior officer to arrest a particular person cannot constitute reasonable grounds for such suspicion. See **O’Hara vs. Chief Constable of the Royal Ulster Constabulary** (1997) AC 286 HL.” Justice Ramlal went on to say an officer must “reasonably suspect” *the existence of facts* amounting to an arrestable offence of a kind that he has in mind.
24. That being said, the Defence and the witness statements of the Third and Fourth Defendants are completely devoid of any facts upon which reasonable suspicion could have been inferred either objectively or subjectively by the Third and Fourth Respondents.
25. Further, the Respondents failure to appear at trial to cross-examine the Claimants and to put into issue any aspect of the Claimants evidence meant that the evidence of the Claimants remained uncontradicted.
26. I find that the Respondents have failed to establish reasonable suspicion to justify the detention and arrest of the Claimants and I find further that the First, Second, Third and Fourth Claimants were unlawfully detained and deprived of their liberty and the First, Second and Fourth Defendants were unlawfully and unjustifiably deprived of their property and subject to inhuman and degrading punishment. I find that the Claimant’s fundamental rights guaranteed under Articles 139(1), 141 and 142 were contravened by the Respondents.

27. What then is the measure of damages that ought to be awarded to the Claimants for the contravention of those rights?
28. The Claimants are seeking general damages for the contravention of their fundamental rights and aggravated and exemplary damages.
29. The learned authors of **Mc Gregor on Damages** 17th edition, page 1396, paragraph 37-007 noted:
- “The details of how damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury’s or judge’s discretion. The principal heads of damages would appear to be injury to liberty, i.e. the loss of time considered primarily from a non pecuniary view point, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation.”
30. In the case of **Navindra Singh vs. Police Constable Benjamin 11712 et al Action No 602-W of 2006, Demerara** Justice Ramlal, awarded the Plaintiff, an attorney-at-law inter alia the sum of \$119,463(one hundred and nineteen thousand four hundred and sixty-three dollars) for his unlawful detention and false imprisonment for a period in excess of four hours. He also awarded the sum of 1,000,000 for the torts of assault, false imprisonment and malicious prosecution. In **Application by Corwin Nicholson and Clavis Nicholson vs. the Attorney General , the Commissioner of Police and anor Action No 2016 HC DEM CIV CM 71** Chief Justice Roxane George(ag.) awarded the Plaintiffs the sum of \$1,000,000(one million dollars) for unlawful arrest and detention together with a further sum of \$500,000(five hundred thousand dollars) each for inhumane treatment after being detained overnight at the police station in what she described was an ”unwholesome cell” without justification. In **Tularam Ramassar vs. Mark Abraham a member of the Guyana Police Force, The Commissioner of Police and Anor Action 2017 HC DEM CIV SOC-108** Justice Gino Persaud awarded the Claimant the sum of \$1,500,000(one million five hundred thousand dollars) for the infringement of Article 139(1) of the Constitution for the Claimants loss of liberty for less than 72 hours together with the sum of \$500,000(five hundred thousand dollars) for deprivation of property.
31. In the case at bar, the First Claimant in his witness statement spoke of suffering the indignity of being arrested in the presence of his children, his anguish and mental

- suffering. While the Second Claimant, Third and Fourth Claimants did not give evidence regarding the injury to their feelings. They would have lost time. The Third Claimant would have been undoubtedly traumatised seeing the police arrest his father and brother. The First and Second Claimants averred in both their Statement of Claim and witness Statements that the police used profane language when addressing them and had guns pointed to them. They also averred that the Third Claimant became fearful and began screaming and crying upon witnessing what was transpiring. The Claimants also mentioned in their witness statements that there was some resistance on the part of the police to drop off the Third Claimant at his grandmother's.
32. Having considered previous awards, the First, Second and Fourth Claimants are awarded compensatory damages in the sum of \$1,000,000 (one million dollars) each for the contravention of their fundamental rights to protection of personal liberty guaranteed under Article 139(1) of the Constitution. The Third Claimant is also awarded compensatory damages in the sum of \$500,000 (five hundred thousand dollars) for the contravention of his fundamental right to protection of personal liberty, his period of detention being less than the other Claimants but significant as he is a minor.
 33. The First, Second and Fourth Claimants are awarded compensatory damages in the sum of \$ 500,000(five hundred thousand dollars) for the contravention of their fundamental rights to protection from unlawful deprivation of property guaranteed by Article 142(1) of the Constitution;
 34. The First and Fourth Defendants having endured the conditions in the Diamond Lockups for two nights are awarded compensatory damages the sum of one million dollars each for the contravention of their fundamental rights to protection from inhuman treatment guaranteed by Article 141(1) of the Constitution. The Second Claimant having endured one night at the said facility is awarded compensatory damages in the sum of \$ 500,000 for the contravention of his fundamental right to protection from inhuman treatment.
 35. In **Rookes vs. Bernard** [1964] 1 AER 367 Lord Devlin at page 407 said that

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter.”

36. In this regard, oppressive, arbitrary or unconstitutional action by the servants of the government was recognised as one of three categories that attract exemplary damages.

37. At page 411, Lord Devlin further stated that when considering awards of exemplary damages three considerations should be borne in mind:

First, the Plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour...Secondly, the power to award exemplary damages constitutes a weapon that, while it can be used in defence of liberty... can also be used against liberty...Thirdly, the means of the parties, irrelevant in the assessment of compensation, are material in the assessment of exemplary damages. Everything which aggravates or mitigates the Defendant's conduct is relevant.

Thus a case for exemplary damages must be presented quite differently from one for compensatory damages... But the fact that the two sorts of damage differ essentially does not necessarily mean that there should be two awards. In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may of course be a sum aggravated by the way in which the Defendant has behaved to the Plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then it can award some larger sum.

38. Lord Halisham of St Marylebone L.C. in **Cassel vs. Broome** [1972] 2WLR 645 at page 658 explained this passage thus:

In my opinion, this passage contains a most valuable and important contribution to the law of exemplary damages which prior to *Rookes v. Barnard* had not, so far as I am aware, been adequately stressed in any previous case, and which, in my view, would retain, and possibly even increase, its value even if the categories in *Rookes v. Barnard* were to be wholly rejected.

In essence the doctrine is that the award of a punitive element in damages, if it is ever permissible, must also remain discretionary, and, in order to give effect to the second of the three " considerations " listed at page 1227, the judge should always warn a jury that they need not award anything, and must not do so unless they are satisfied that a purely compensatory award (in a sense which I will explain) is inadequate. It follows that whatever they

do award should only be a sum which has taken into account the award of damages already notionally allowed as compensation, including, where appropriate, the "aggravated" element required by a defendant's bad conduct, and should never exceed the amount by which the required penalty (if that is the right word) exceeds the required compensation.

39. This, the Court ought to consider exemplary damages only where a compensatory award is inadequate. At page 685-686, Lord Reid in **Cassell** advised that the court should approach the matter thus:

The difference between compensatory and punitive damages is that in assessing the former the jury or other tribunal must consider how much the plaintiff ought to receive whereas in assessing the latter they must consider how much the defendant ought to pay. It can only cause confusion if they consider both questions at the same time. The only practical way to proceed is first to look at the case from the point of view of compensating the plaintiff. He must not only be compensated for proved actual loss but also for any injury to his feelings and for having had to suffer insults indignities and the like. And where the defendant has behaved outrageously very full compensation may be proper for that. So the tribunal will fix in their minds what sum would be proper as compensatory damages. Then if it has been determined that the case is a proper one for punitive damages the tribunal must turn its attention to the defendant and ask itself whether the sum which it has already fixed as compensatory damages is or is not adequate to serve the second purpose of punishment or deterrence. If they think that that sum is adequate for the second purpose as well as for the first they must not add anything to it. It is sufficient both as compensatory and as punitive damages. But if they think that sum is insufficient as a punishment then they must add to it enough to bring it up to a sum sufficient as punishment. The one thing which they must not do is to fix sums as compensatory and as punitive damages and add them together. They must realise that the compensatory damages are always part of the total punishment."

40. Here, the Respondents unlawfully stopped, searched and detained the Claimants; they refused to inform the Claimants of the reason(s) for their arrest. The Third Respondent in particular repeatedly informed The Claimants that they would know the reasons for their arrest when it appeared in the headlines in the newspapers; they unlawfully and arbitrarily deprived the First, Second and Fourth Claimants of their

property; they denied the Claimants the right to consult with their attorney and told them no one at the station had credit to waste on a phone call; they refused the Second Claimant, a youth, refreshment; At the station they trumped up charges of possession of narcotics and robbery under arms against the First, Second and Fourth Claimants and insisted that they sign the books at the station although they had no reasonable suspicion and or evidence that the First, second and Fourth Claimants committed those offences; The Respondents behaved in a most unprofessional manner, using colourful and degrading language and giving false names when the Claimants asked their names. They insulted and humiliated the First, Second and Fourth named Defendants. They took the First, Second and Fourth Claimants on a “drive of shame.” The police driver was instructed by the Third Respondent to drive through busy areas and pass the School of Nations to ensure that the Second Claimant’s teachers and classmates saw him. The Third Respondent announced the Claimants arrival at the station as “new felons” to book. The Respondents instructed the Claimants to wash their hands in a drain(running water was unavailable) in order to be fingerprinted; when the second Claimant threatened to sue the Respondents , the Third Respondent threatened to wait outside his school, informing him “duh is how y’all body does get find and ya murder does be a mystery.” When chided by the Fourth Claimant that he ought not to speak to a young boy in that manner, the Third Respondent retorted, “if I ever see you down the road I’m going to bore you up or chop yuh sk4\$#t up, is cutlass I does roll with, you lucky me int had lil drugs fuh plant in ya house and loss you away in prison fuh life.”

41. This court finds the compensatory damages awarded herein inadequate to punish and deter the outrageous conduct of the Respondents and finds an award of exemplary damages is most appropriate to condemn the oppressive, arbitrary and unconstitutional acts of the Respondents. This Court awards exemplary damages in the sum of 1,000,000 each to the First, Second and Fourth Claimant.
42. In closing I would like to echo the sentiments expressed by Justice Peter Rajkumar in **Mustapha Ghanny vs. Police Constable Dev Ramadhin** No 16969 et al Claim No. CV 2015-01921 which are most apposite. At page 7 of his judgement he said:

“The duty of courts in a democracy which subscribes to the recognition, protection and enforcement of basic standards of treatment of its citizens, requires condemnation of high handed and oppressive actions behaviour and conduct of the servants or agents of the State lest they be condoned, encouraged systematized and perpetuated.”

43. For ease of reference the Orders made herein are out below:

This Court awards:

- (1) Compensatory Damages in the sum of \$1,000,000 (one million dollars) each to the First, Second and Fourth Claimants and the sum \$500,000 (five hundred thousand dollars) to the Third Claimant for the contravention of Article 139(1) of the Constitution;
- (2) Compensatory Damages in the sum of \$500,000 (five hundred thousand dollars) each to the First, Second and Fourth Claimants for the contravention of Article 142(1) of the Constitution;
- (3) Compensatory Damages in the sum of \$1,000,000 (one million dollars) each to the First and Fourth Defendants and \$500,000 (five hundred thousand dollars) to the Second Claimant for the contravention of Article 141(1).
- (4) Exemplary damages in the sum of 1,000,000 (one million dollars) each to the First, Second and Fourth Claimants;
- (5) Costs to the Claimants in the sum of \$250,000 (two hundred and fifty thousand dollars) to be paid by the Respondents jointly/severally on or before 18 November 2020.

Priya Sewnarine-Beharry

October 5, 2020.