

20th September 2011

HOVE & ASSOCIATES, Attorneys-at-Law
The Peoples Law Firm.

Remedies Against the Police: A Civil Lawyer's Perspective

Commentary on The Nelson Street 21

I am writing this article today from the comfort of the Hall of Justice on Knox Street in Port of Spain Trinidad. The furnishings of the Supreme Court's legal library seems a far cry from the environs of east Port-of-Spain and the unfortunate circumstances of the 21 men arrested on Nelson street on the 23rd August 2011.

Indeed we now know that those said men were wrongfully arrested, falsely imprisoned for 3 weeks and maliciously prosecuted by the state without adequate evidence to lead a successful prosecution against them.

In the land of Carnival and Calypso, sweet T&T, where our freedom of expression and ingenuity has allowed us to produce the most dynamic musical instrument the western world has ever seen or heard (Steel Pan), surely the representatives of these men, now commonly called the N21 must beg the question, where is our liberty?

Being an Attorney-at-Law I put on my legal hat and I contemplate, what are the Civil Remedies which the N21 may be entitled to, given their unfortunate situation? In local parlance "They ha to sue somebody".

The primary duties of those who hold the office of police officers are the protection of life and property, the preservation of peace, and the prevention and detection of criminal offences. To fulfil these duties they are granted extraordinary powers, the public and the judiciary therefore have the right to expect the highest standards of conduct from them".

Once it is proven that there has been an unconstitutional action by the servants of the government, in the circumstances of the N21 a wrongful arrest and detention by the police, the law is clear on the remedies available to a claimant in the civil courts. In the leading case of **Thompson and Hsu V Commissioner of Police of the Metropolis**, Lord Woolf MR emphasised that if the court finds in favour of the claimant the only remedy which it has the power to grant is an award of damages.

Damages, Damages, Damages

It is a fact that monetary compensation has to be awarded to those citizens whom have had their constitutional rights infringed upon. In the majority of cases damages are awarded as compensation to the Claimant, and are not intended to punish the defendant. In the case of a wrongful arrest compensatory damages are usually in the form of aggravated damages and exemplary damages. The latter being awarded in only the most extreme cases.

Where one man is more powerful than another, it is inevitable that he will use his power to gain an advantage, rightly or wrongly this has been the situation from time immemorial. However when the Government is involved, the situation is different, for the servants of the government and in this case

the Police are also the servants of the people and the use of their power must always be subordinate to their duty of service.’¹

Exemplary damages should be awarded if, but only if, the court considers that the compensation awarded by way of aggravated damages is in the circumstances an inadequate punishment for the defendants.

The sum awarded by way of exemplary damages should be sufficient to mark the court's disapproval of the oppressive or arbitrary behaviour but should be no more than is required for this purpose.²

The very circumstances which will justify the award of aggregated damages are probably the same as those which make it possible to award exemplary damages. This accentuates the risk of double counting.’ And there should not be a situation where victims receive compensation twice for the same offence.

Who Pays

When the police whom are indeed servants of the government, act oppressively, arbitrarily or unconstitutionally the damages which are eventually awarded are met not by the offending police officers nor their superiors but unfortunately out of public funds. ‘The amount of such damages may therefore be of less significance to the perpetrator of the misconduct than the fact that their conduct has been subject to public criticism.’

Therefore we must all be concerned as citizens of the Republic of Trinidad and Tobago when our Director of Public Prosecutions states in relation to the N21 “Your Worship, I have perused what passes for evidence and I am of the view that there is absolutely no evidential value in what I saw. The prosecution would not be leading any evidence and in a short while, I would issue notices of discontinuance in these matters,”

It is frightening to know that no matter how high the level of compensation afforded for this gross miscarriage of justice, it is the taxpayer who bears the burden of the financial restitution. We must also note that the ultimate aim of compensatory damages is to deter and ensure that no similar action will take place in the future. These rationales apply to *the N21*, and with respect it is my learned opinion that exemplary damages should be awarded to mark out the public disapproval of the wrongful arrest and false imprisonment of these men for three weeks.

Farai Hove Masaisai
LL.B(Hons), LPC(London), LL.M(Nottingham)

Attorney-at-Law
Hove & Associates
www.TTLawFirms.Com

15 Gordon Street
Port-of-Spain
Trinidad

¹ Kuddus V Chief Constable of Leicestershire Constabulary [2001] UKHL 29

² Thompson and Hsu V Commissioner of Police for the Metropolis [1998] QB 498, CA. Also see Broome V Cassell & Co Ltd [1972] AC 1027 a seven member HL decision, on the width of the concept of ‘servants of the government’.