[2013] UKPC 15
Privy Council Appeal No 0003 of 2012

JUDGMENT

Terrence Calix (Appellant) *v* Attorney General of Trinidad and Tobago (Respondent)

From the Court of Appeal of the Republic of Trinidad & Tobago

before

Lord Hope
Lord Kerr
Lord Wilson
Lord Reed
Sir John Sheil (NI)

JUDGMENT DELIVERED BY LORD KERR ON

23 MAY 2013

Heard on 14 March 2013

Appellant	*Respondent*
Anand Beharrylal Frances Ridout Taurean Dassyne (Instructed by Shearman Bowen & Co Solicitors)	Thomas Roe (Instructed by Charles Russell LLP)

LORD KERR

Introduction

1. On the evening of 26 November 1998 two young people, GN and JF, were subjected to a horrifying attack at Richardson Street in Point Fortin, St Patrick, in the Republic of Trinidad and Tobago. A man wielding a cutlass robbed GN and raped JF. On 6 December 1998, the appellant, who was something of a recluse, was arrested on suspicion of being the person who had carried out the attack. At the time he lived in an abandoned shed within walking distance of Richardson Street. An identification parade was held on 10 December 1998 and the appellant was picked out by both GF and JF as the man who had committed the crimes.

2. The appellant was charged with robbery and rape and brought before Point Fortin Magistrates' Court on 11 December 1998. He was remanded in custody. A week later, on 18 December 1998, he appeared again before the magistrates' court. On this occasion the magistrate fixed bail but this was subject to the condition that the appellant provide a surety of some $100,000 (roughly equivalent to £10,000). He failed to provide such surety and he was again remanded in custody where he remained until his trial on 5 May 1999.

3. The trial on 5 May 1999 was a summary trial on the robbery charge only. The appellant was represented pro bono by counsel. At the close of the prosecution case an application was made for a direction of no case to answer. This was based on the fleeting and unpropitious circumstances in which the purported identification had been made and on deficiencies in the identification parade. The application succeeded. The appellant was duly acquitted of the robbery charge. Notwithstanding this and despite the fact that the evidence against him on the charge of rape was the same as that on the charge of robbery *viz* the identification by the same two witnesses and despite the further fact that the officer in charge of the prosecution had recommended that it be discontinued, the appellant remained in custody and stood trial on the charge of rape. On 28 August 1999, on his trial on this charge, a similar application for a direction of no case to answer was made on behalf of the appellant and, unsurprisingly, it was also granted and the appellant was acquitted of the rape charge also.

The malicious prosecution proceedings

4. The appellant instituted proceedings for malicious prosecution. On the trial of that action, it was found that there had been reasonable and probable cause to arrest the appellant on 6 December 1998 and to charge him with the offences of robbery and rape. But it was held that after the robbery charge had been dismissed, the appellant should not have been prosecuted on the rape charge and that his trial on that charge amounted to malicious prosecution. At the end of the hearing on 15 March 2007, Acting Judge Aboud J awarded compensation of $38,000 to the appellant. He gave reasons for that award in a written judgment delivered on 29 May 2008. In para 21 of his judgment Aboud J said this:

> "The plaintiff remained on remand for an additional 115 days or just under four months pending the determination of the rape charge. I assessed his general damages at $38,000. In arriving at this figure I took into account the peculiar character and reputation of the plaintiff in 1998. He had been living as a homeless person in an abandoned shed, in an environment that was unhygienic and squalid. He had no toilet facilities, running water, or electricity. He refused contact with his sister who lived in premises in San Juan, and was not willing to call upon any friend or acquaintance when arrested. Notwithstanding his high school education and his training at John Donaldson Technical Institute as a machinist, he deliberately withdrew from society and the labour force at a time when employment and a better way of life was readily available. He might have been expected to know more, to do more, and to want more for himself as a free individual, and when he was on remand. He appeared without legal representation throughout every adjournment of the robbery charge, although Legal Aid was available to him. Mr Dindial first appeared *amicus* for him on the first day of the robbery trial. He was a recluse, choosing to live in unhygienic conditions, ekeing out a living as a scavenger of copper, when many other options must have been available to him. I marked him as an odd man. He might have been going through an irrational or unstable phase of his life, because, with his education and training, it was unreasonable to choose to live in such squalid conditions for over eight years secluded from society. Sadly, his reputation and social standing did not amount to much. Save for some unnamed friends that also scavenged on the coast, and who he nonetheless refused to contact throughout his ordeal, he appeared to have no social contact with any person."

5. The trial judge dealt with the appellant's claim for compensation for loss of liberty in para 22 of his judgment:

> "The physical conditions at the police station's cell and at the remand yard could not have been worse than in the abandoned shed, and I preferred Corporal Monsegue's description of the cell to that of the plaintiff. Of course, in the cell he was deprived of his liberty. But his liberty was conditional on his bail, an avenue that might have been available with his sister's or his friends' assistance, had he chosen to contact them. The bail might have been reduced on application, but no application was made. After the dismissal of the robbery charge, on grounds certainly to be advanced at the rape trial, the magistrate or a Judge in Chambers would very likely have reduced the bail, which was originally fixed to cover both charges. His attorney made no application while the rape charge was being prosecuted."

6. Finally, in relation to the impact that the prosecution had on the appellant, the judge said this in para 23 of his judgment:

> "In evidence the only anguish that the plaintiff admitted was that the incarceration 'kind of bogged me down, it had me kind of uncomfortable'. He said his friends were 'sympathetic' to his situation after his release. Beyond these few remarks, he left his mental anxiety to be inferred by the Court. He did not say that he was shunned or treated as a pariah after his release …"

The Court of Appeal hearing

7. In an ex tempore judgment delivered on 24 November 2010, the Court of Appeal dismissed the appellant's appeal. Stollmeyer JA, delivering the unanimous judgment of the court, said that the trial judge had correctly assessed compensation for the damage to the appellant's reputation. In relation to the claim for loss of liberty he said this:

> "The second head [of damages] raises the real issue as to quantum. The appellant was incarcerated up to the time of the dismissal of the rape charge some 115 days after the robbery charge was dismissed. He contends that an award

> of $38,000 for this period is inordinately low. I do not agree. The issue which arises here is whether a person who is incarcerated, although granted bail, can receive an award of damages in malicious prosecution under the head of endangerment of liberty. The issue is an important one and we are told that this is the first occasion on which it falls to be decided by the Court of Appeal. Conflicting decisions at first instance have been referred to, but in the circumstances I have come to the view that the grant of bail by the Magistrate, although not accessed by the appellant, is, in law, a sufficient ground in this case to disentitle him to an award under this head. I say so for two basic reasons. The first is that granting bail interposes a judicial act between the prosecution and the continued detention of the accused. The prosecution is no longer the cause of the deprivation of liberty. That deprivation is caused by the judicial act. Second, an award of damages here might be regarded in the circumstances of this case as inappropriate because of the failure to apply to the Magistrate, or to a Judge, for variation of the bail which, as the trial judge pointed out, was an application very likely to have succeeded. This failure was what endangered the appellant's own liberty. In the circumstances, and having regard to comparative awards, the trial judge applied the law correctly and I do not find that the award is inordinately low."

Damage to reputation

8. On his appeal to the Board, the appellant contended that the trial judge had engaged in a series of speculative assessments about him which had led to a plainly erroneous evaluation of the damage to his reputation; that the judge had failed to take sufficiently into account the appellant's good character and the seriousness of the offence on which he had been tried; that he had equated the appellant's lack of social standing with his character and had, on that account, wrongly concluded that his reputation did not amount to much; and that in consequence of these errors, he had made an award for loss of reputation that was inordinately low. In relation to the claim for compensation for loss of liberty, the appellant submitted that both the trial judge and the Court of Appeal had erred in concluding that the failure to apply for a revision of his bail conditions was the reason that he remained in custody until the conclusion of the second trial.

9. Oddity of personality, even frank eccentricity does not of itself diminish the value of one's good character. The appellant in this case was certainly not a conventional man. He had had a reasonable education. In the past he had lived, apparently uneventfully, with his sister and her family for some time. He was plainly capable of meaningful employment. Notwithstanding these standard indicia of an orthodox life, it appears that the appellant had chosen to withdraw from normal society. He lived in what to many would seem squalid conditions. But he did so of his own volition. He was a free man exercising freedom of choice as to where and how he lived. Simply because he chose an unconventional path, it should not be supposed that his good character was any less valuable in objective terms or that it was any less cherished by him. Before he was arrested and charged with these offences, Mr Calix had never been convicted of a criminal offence. Being prosecuted for the extremely serious offence of rape was a substantial matter. It is something that, for a man of good character, must rank highly in terms of reputational damage.

10. The judge said that he took into account the "peculiar character and reputation" of the appellant in assessing damages. Peculiarity of character is not to be assimilated with reputation, of course. As counsel for the respondent accepted, reputation has an objective value. Unjustified damage to reputation demands to be recognised irrespective of how an individual subjectively reacts to that damage. It hardly needs to be said that someone who suffers a severe adverse personal reaction to such damage may be awarded greater compensation than others who are more stoical about or indifferent to the affront of the slur. But that does not mean that the person of more robust personality should be denied appropriate relief. It simply means that compensation should be adjusted to take account of the anguish that the reputational damage occasions.

11. A number of factors influenced the judge in the present case in his choice of award of damages. First, the appellant's unusual place in society. The Board considers that this is something that can only be relevant in so far as it has an impact on the dissemination of the information about the prosecution of the appellant and on how his reputation stood in the minds of those who might become aware of the prosecution. That the appellant might be regarded as occupying a lowly status cannot of itself reduce the compensation to which he might otherwise be entitled. That he might have been expected "to know more, to do more, and to want more for himself as a free individual, and when he was on remand" does not appear to the Board to impinge on the question of damage to reputation. Moreover, as counsel for the appellant pointed out, he was not asked about what more he might have done for himself. If he had been asked, he might well have given an account that would have explained convincingly why he had not taken a different course. Since he had not been given that opportunity, in the Board's judgment, this factor, even if relevant, could not tell against him.

12. For the respondent it was argued that in this part of his judgment, the judge was merely expressing the melancholy conclusion that no-one would think less of the appellant on account of his prosecution for rape because he had chosen to live in squalid conditions and because of his avowed inaction while he was at freedom (before arrest) and after his acquittal on the robbery charge. If that indeed was the judge's approach, the Board does not accept that he was entitled to take it. The damage to the appellant's reputation, judged on an objective basis, could not be influenced by considerations as to his personal circumstances. This is to be measured by reference to the fact that he was previously of good character and that he was prosecuted for the very serious offence of rape. And in so far as the reaction of those who learned of the prosecution was concerned, the fact that the appellant lived in neglected conditions or that he did not do more to improve his lot cannot logically be connected to how his reputation would be judged by those who learned that he had been prosecuted for rape. The appellant may not have been a high-ranking member of society. That does not mean that his reputation was of any less significance than that of those who were.

13. It is not immediately evident that the judge's reference to the appellant's failure to obtain legal representation until his trial was merely by way of background or was intended to convey that this failure was symptomatic of indifference to his plight on the part of the appellant. It is not easy to see that the observation was material solely as a background fact and the Board is inclined to believe that the judge did indeed regard it as indicating a lack of responsibility on the part of the appellant. If he did treat it in this way, in the Board's judgment he should not have done. Mr Beharrylal, who appeared on behalf of the appellant before the Board, was able to demonstrate by reference to section 16(6) of the Legal Aid and Advice Act and para 2 of Part II of the First Schedule to the Act that the fees payable for representing someone such as the appellant were extremely modest. He submitted (without contradiction from Mr Roe who appeared on behalf of the respondent) that, if the appellant had applied for legal aid, he would have found it much more difficult to obtain representation pro bono. Quite apart from these considerations, however, the simple fact is that the appellant was never asked about his not having legal representation before his trial. The appellant not having been given the opportunity to explain that circumstance, it could not count against him.

14. The judge concluded that the appellant's reputation did not amount to much. He associated this with the appellant's lack of social standing. For the reasons given earlier, the Board does not consider that lowly status should of itself diminish the compensation that someone should receive. Obviously if an individual is a distinguished and popular public figure, damage to his reputation might well be considered to be of greater import than to someone who is not well-known but this does not mean that the less well-known or well-regarded person will suffer no reputational damage if subject to malicious prosecution. As the Board said in *Amin v Bannerjee* [1947] AC 322, 331:

> "a criminal charge involving scandal to reputation or the possible loss of life or liberty to the party charged does necessarily and naturally involve damage, and in such a case damage to reputation will be presumed."

15. The conclusion of the judge that the appellant did not suffer much in the way of mental anguish was based on the evidence that he gave that his incarceration "kind of bogged [him] down, it had [him] kind of uncomfortable". In light of this somewhat understated testimony, the judge felt that the appellant had left his mental anxiety to be inferred by the court. The Board considers that it was open to the judge to reach the conclusion that the appellant did not suffer significant anxiety but it observes that it is necessary to keep in mind the possibility that inarticulacy on the part of someone such as the appellant may be the reason that a more explicit claim to distress is not put forward.

16. Considering the judge's assessment of damage to reputation as a whole, the Board has concluded that his failure to advert directly to the fact that the appellant had a good character and that the malicious prosecution was in respect of a very serious offence led him to underestimate the significance of this aspect of the appellant's claim. As the authors of Clayton and Tomlinson on *Civil Actions against the Police*, 3rd ed (2004), observe at para 14-064:

> "The seriousness of the offence for which the claimant was prosecuted should be considered. The more serious the offence, the greater the damage to the claimant's reputation. Thus, for example, accusations such as dishonesty or sexual misconduct will cause more damage than accusations of minor public order offences or assaults. A money figure should be placed on this 'reputation damage'. The award should be increased if the prosecution received wide publicity."

and

> "The claimant's reputation should then be considered. If he is of good character then the 'loss of reputation' sum should not be reduced. If, on the other hand, he has previous convictions then there will be reductions in his 'loss of reputation' damages."

17. It is of course true that the appellant's reputation had already suffered damage as a result of his having been prosecuted for robbery. That damage does not form part

of his claim since it has been held that his prosecution on that charge was justified and that finding has not been challenged. The Board considers, however, that this circumstance should not operate to diminish the compensation to which the appellant is entitled. The appellant was acquitted of that charge and his good character is intact. His acquittal on that charge serves as a complete vindication of his innocence. The appellant is therefore entitled to be compensated on the basis that he was of unblemished reputation when he was prosecuted for rape.

Loss of liberty

18. On the loss of liberty aspect of the appellant's claim the Court of Appeal took a different approach from that of the trial judge, although this was not acknowledged in Stollmeyer JA's judgment. The trial judge considered that the fact that the appellant might or probably would have been released on bail (both are adumbrated in his judgment) affected the quantum of the appellant's claim on this aspect of the case. In effect, the judge treated this as a failure to mitigate loss, although again this was not expressly articulated. He also appears to have decided that because the conditions that the appellant experienced while in custody did not differ significantly from his living conditions while he was at liberty, any compensation for this aspect of the claim would have to be modest. By contrast, the Court of Appeal decided that the fixing of bail had the effect of disentitling the appellant to any damages whatever firstly because this constituted an intervening judicial act which supplanted the prosecution as the cause of the appellant's continued detention and secondly because the appellant's failure to apply for a variation of the bail conditions was what "endangered [his] own liberty". (One might observe en passant that there appears to be inconsistency between these two findings – either the judicial act was alone the cause of the appellant's continued detention or it was his failure to apply for bail.)

19. The Board considers that neither the trial judge nor the Court of Appeal was correct in the approach that they took to the appellant's claim for compensation for loss of liberty. The judge's analysis must be presumed to proceed on the premise that, if the appellant had been remanded in custody, he would be entitled to recover damages but that those damages were to be reduced because he failed to take steps to secure his release. This is a classic mitigation of loss situation. But the way in which such a claim should be dealt with was not followed at the trial. In the first place, the respondent had not pleaded nor had it made the case that the appellant had failed to mitigate his loss. Secondly, it had never been put to the appellant that he had had it within his power to obtain his release by applying for and being granted a variation in his bail conditions. There was simply no evidence on which the judge could have based a finding that the appellant could have obtained his release on bail. Thirdly, if the evidence on this question had been led and assessed, it is – at least – highly questionable whether it could have been found that the appellant would in fact have been successful in persuading a court to fix bail terms which he could fulfil.

20. Mr Roe argued that the judge was entitled to have regard to the possibility of the appellant obtaining bail as a general background circumstance. The Board does not accept that argument. If the appellant's entitlement to damages was to be affected by the possibility that he would have been released on bail, this was a matter which required to be pleaded and examined through admissible evidence. It was not something to which regard could be had on a speculative ad hoc basis. Mitigation of loss can only be dealt with in this way – see the judgment of the Board in *Geest plc v Lansiquot (St Lucia)* [2002] UKPC 48; [2002] 1 WLR 3111, para 16:

> "It should however be clearly understood that if a defendant intends to contend that a plaintiff has failed to act reasonably to mitigate his or her damage, notice of such contention should be clearly given to the plaintiff long enough before the hearing to enable the plaintiff to prepare to meet it. If there are no pleadings, notice should be given by letter."

21. If a failure to mitigate loss had been pleaded, it would have been for the respondent to prove it. The appellant would have had the opportunity to deal with the question whether he was likely to have been released on bail and to explain why he did not seek a variation of the terms on which it had been set. None of this happened. Without such an examination of the matter it was not open to the judge to make a finding adverse to the appellant on the issue.

22. It is, moreover, very far from certain that the appellant would have been able to persuade a court to alter the conditions of his bail so as to enable him to avail of it. He was of no fixed abode. He did not have any clear community ties and he faced a most serious sexual offence. Section 6(2) of the Bail Act provides that where the offence of which the defendant is accused in the proceedings is punishable with imprisonment, it shall be within the discretion of the court to deny bail where the court is satisfied that there are substantial grounds for believing that the defendant would fail to surrender to custody; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. Section 12(2) provides that a court may require any person applying for bail to provide, as a condition for bail before his release, a surety to secure his surrender to custody. Given the appellant's personal circumstances, it seems likely that he would be required to provide a surety, even if it was not to the extent of $100,000, the original surety fixed. It could not be assumed that, even if the amount of the surety was reduced, the appellant would be able to provide the required surety. There are far too many imponderables about this question to allow a confident conclusion that the appellant would have been able to obtain bail. But such a conclusion is prerequisite to a finding that the appellant's failure to obtain bail mitigates his loss of liberty as a consequence of the malicious prosecution.

23. The respondent did not seek to uphold the Court of Appeal's conclusion that the grant of bail was a judicial act which became the cause of the appellant's detention. A claimant's failure to take up a grant of bail (which is the avowed basis on which the appellant should not recover compensation for loss of liberty) is not a "judicial act". In any event, although a judicial act precludes liability in false imprisonment, it does not relieve the prosecutor of liability in malicious prosecution: the prosecutor remains liable for the damage caused by his setting the prosecution in motion – see *Lock v Ashton* (1848) 12 QB 871 (116 ER 1097). For the reasons given above in relation to the judge's error in concluding that the appellant would have obtained bail, the Court of Appeal's second conclusion *viz* that it was the appellant's failure to apply for a variation of his bail conditions which endangered his liberty is also erroneous. The Board has therefore concluded that the appellant was entitled to recover compensation for his loss of liberty.

24. A discrete issue arises in relation to the appellant's loss of liberty claim. The trial judge found that the physical conditions at the police station's cell and at the remand yard could not have been worse than in the shed which the appellant inhabited before his arrest. Immediately following his arrest the appellant was held in custody in a cell at the police station. He has not complained about conditions encountered there. The appellant was held for most of the time that he was on remand in Golden Grove prison and it seems clear from almost contemporaneous evidence that conditions there were appalling.

25. In a report to the Inter American Court of Human Rights about detention in Trinidad and Tobago of 14 January 2002 conditions in Golden Grove were described thus:

> "Cells of dimensions of approximately 9ft x 6ft are shared by up to seven or eight prisoners. Sleeping facilities are inadequate with only one double bunk in each cell. Consequently many inmates are forced to sleep on the floor on a thin piece of worn carpet which is never cleaned or on a thin sheet if provided by relatives. Cells are poorly ventilated and are hot and [uncomfortable]. Lights may be kept on all night and this affects the inmates' ability to sleep. A single plastic pail is provided for use as a toilet by all the detainees in the cell. The pail is emptied twice a day. Shower facilities and washing sinks for the large number of prisoners on remand are also limited. Prisoners remain locked up in their cells for up to 23 hours or more and have no access to a sink or other form of running water and are forced to wash their hands or brush their teeth over the slop pail. No form of formal exercise or other recreation is provided. Access to a doctor or dentist

> is extremely limited. There is one prison doctor for the entire prison population at Golden Grove. Only emergency dental cases get treated. The food is of poor quality."

26. In his address at the opening of the 2004-2005 Law Term on 16 September 2004 the Chief Justice, the Hon Mr Justice S Sharma, also referred to what he described as the "abhorrent and revolting" and "sub-human" conditions in the remand section of the Port of Spain prison. The report of 14 January 2002 had stated that conditions in the Port of Spain prison were broadly equivalent to those encountered in Golden Grove, although it should be noted that in *Merrick v Attorney General* (as to which see below at para 30) the Court of Appeal found that conditions in Port of Spain were worse.

27. The appellant therefore submits that the conclusion of the judge that conditions in the appellant's shed could not have been worse than those he experienced in prison is insupportable. It will be a matter for the Court of Appeal to address this issue in the course of its further consideration of this case but the Board accepts that, on the evidence produced concerning this issue, there is substantial reason to doubt the accuracy of the judge's finding.

Appeals from compensation awards

28. It is well settled that before an appellate court will interfere with an award of damages it will require to be satisfied that the trial judge erred in principle or made an award so inordinately low or so unwarrantably high that it cannot be permitted to stand. In *Flint v Lovell* [1935] 1 KB 354, 360 Greer LJ said:

> "In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."

29. A statement to like effect was made by Viscount Simon in *Nance v British Columbia Electric Railway Co Ltd* [1951] AC 601, 613:

> "[T]he appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. … [I]t must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

30. The Board is satisfied, for the reasons earlier given, that the trial judge erred in his approach to the question of damage to the appellant's reputation and that the Court of Appeal likewise erred in endorsing that approach. Both were also wrong in dismissing or reducing the compensation to which the appellant was entitled by reason of his loss of liberty. Quite apart from these considerations, however, the Board is satisfied, as a result of its consideration of a number of cases decided in Trinidad and Tobago, that there is a marked contrast between the award of compensation in this case and the awards in those cases. In particular, the following decisions strongly suggest that, by any standard, the amount of compensation awarded in the present case is inordinately low. In *Sorzano and Mitchell v Attorney General* Civ App No 101 of 2002 an award of $180,000 was made in respect of malicious prosecution which resulted in 385 days; incarceration. In *Blake v Attorney General* [2013] Civ 2010 - 03388 an award of $450,000 was made where the period of detention was some three and a half years (although it should be noted that there was some "tapering" of the award in that case in line with the observations of the Board in *Takitota v Attorney General* [2009] UKPC 11 and that there was an element of aggravated damages in the award). Most significantly, in *Merrick v Attorney General*, a decision delivered on 5 February 2013, which extensively reviewed the authorities in this area, the Court of Appeal awarded $200,000 for 36 days; detention. In that case aggravated damages formed part of the award but, even allowing for that aspect of the award, the amount of compensation in that case is strikingly divergent from the award in the present case.

31. Both by reason of the errors of principle in the judgments of the trial judge and the Court of Appeal and because the Board is satisfied that the award of compensation in this case was inordinately low, the award of $38,000 must be quashed.

Aggravated damages

32. The appellant did not pursue a claim for exemplary damages but argued that the circumstances in which the malicious prosecution of the rape charge took place and the conditions in which he was held as a remand prisoner warranted an award of aggravated damages. It was submitted that continuation of the prosecution after it was

known that the evidence was insufficient to sustain the offence alleged was highhanded, malicious, oppressive, arbitrary and unconstitutional. Unmistakable evidence of this was provided, the appellant contended, by the refusal to accept the advice of the officer in charge of the case that the prosecution should be discontinued. Furthermore, the appalling conditions which the appellant was required to endure while on remand fully merited an award of aggravated damages.

33. The Board considers that these are matters best left to the judgment of the Court of Appeal in Trinidad and Tobago. That court is in a better position to assess, in the local context, how significant was the failure of the prosecuting authorities to follow the advice of the police officer in charge of the case and to reflect more assuredly the impact of the appellant's experience in Golden Grove prison while on remand. It is necessary to record the Board's grave concern about the account of prison conditions which it has been given (referred to in para 26 above) and to state its conviction that if these approximated to those which the appellant encountered this might well lead the Court of Appeal to conclude that aggravated damages should be awarded. But the Board is conscious that submissions such as it has received on this subject were not presented to the Court of Appeal and it considers that that court, being familiar with local conditions and circumstances, should have the opportunity to decide whether they warrant an award of aggravated damages.

Disposal

34. Although it would be possible for the Board to make an estimate of the appropriate award of compensation based on its identification of the principles to be applied in that exercise and the recent case-law of Trinidad and Tobago to which it has been referred, it is obviously preferable that a local court, plainly more conversant with local conditions and domestic jurisprudence in this area, should have the opportunity to consider this appeal again, in light of the judgment of the Board. The award of $38,000 will therefore be quashed and the matter will be remitted to the Court of Appeal for its further consideration and determination in accordance with the principles which the Board has outlined and the guidance which this judgment has provided.