

**Date: 20100719**

**Docket: T-1238-02**

**Citation: 2010 FC 751**

**Ottawa, Ontario, July 19, 2010**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ESEMUEDE HENRY IDADA**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Defendant**

**REASONS FOR ORDER AND ORDER**

[1] In my Reasons for Judgment issued March 26, 2010, in this matter, I retained jurisdiction with respect to costs. The trial had been bifurcated and the parties informed the Court that a determination on the costs might facilitate their agreement on damages. Both parties have filed submissions which I have reviewed with care.

[2] The plaintiff sued the defendant for damages for his alleged illegal detention and search, his alleged assault and battery, and an alleged slander. The slander allegation was dropped at the commencement of trial. I found that the plaintiff's detention and search was justified and thus no damages flowed from those actions. I found that the plaintiff had suffered a battery and assault by agents of the defendant and that damages would follow for that conduct.

[3] The defendant submits that it should be awarded its costs, subject to a 25% reduction because it was the successful party overall.

[4] The plaintiff seeks his costs on a solicitor-client basis, or alternatively, on a party and party basis, or in the final alternative based on Column III of Tariff B.

[5] While there is some merit to the defendant's submission in that it was successful in two of the three causes of action, I am not prepared to award the defendant its costs. The slander allegation took no time at trial and appears to have taken little pre-trial time. The allegations of illegal detention and search took some considerable trial time; however, the evidence led on this aspect of the claim was often intertwined with that led to support the assault and battery claim. It was one of a continuous series of events.

[6] As was noted by the defendant, it is a general rule that costs follow the event and that a successful party should not be penalized because not all of its points were accepted by the Court: *Sunrise Co. v. The "Lake Winnipeg"*, [1988] F.C.J. No. 1009 (FCA). The plaintiff's allegations of

an illegal detention and search were not frivolous or vexatious or clearly lacking in merit. He ought not to be penalized because those claims failed to succeed.

[7] On the other hand, the plaintiff is not entitled to his costs on a solicitor client basis. The conduct of the defendant and its counsel at trial were unobjectionable. The defences advanced were not clearly lacking in merit; in fact they were successful in part; however, some of the time at trial was taken with defendant witnesses whose evidence was of marginal assistance to the Court.

[8] The plaintiff incurred disbursements of \$4,199.31, inclusive of G.S.T. They appear to the Court to have been reasonably incurred and he is entitled to recover them.

[9] The plaintiff incurred legal fees, inclusive of G.S.T. of \$98,961.98.

[10] The plaintiff advises that there are no relevant offers to settle.

[11] The action was of importance to the plaintiff; he is a proud man.

[12] Considering the factors set out in Rule 400(3) and acknowledging that costs are a matter of discretion for the trial judge, it is my determination that the plaintiff is entitled to a lump sum award of costs in the amount of \$37,500.00, inclusive of fees, disbursements, and GST with respect to the trial of this action to date.

[13] An Order for Security for Costs dated July 8, 2004, was obtained by the defendant against the plaintiff. The plaintiff was required to pay into Court the amount of \$5,000.00 as security for the defendant's costs. In light of the disposition of this action, the plaintiff is entitled to a return of the funds paid into Court.

**ORDER**

**THIS COURT ORDERS that:**

1. The plaintiff is awarded his costs to date, fixed in the amount of \$37,500.00, inclusive of fees, disbursements, and GST; and
2. The plaintiff is to be paid out of court the sum of \$5,000.00 deposited on November 18, 2004 representing security of costs, plus any accrued interest accumulated thereon.

“Russel W. Zinn”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1238-02

**STYLE OF CAUSE:** ESEMUEDE HENRY IDADA v.  
HER MAJESTY THE QUEEN IN RIGHT OF CANADA

**PLACE OF HEARING:** Toronto, Ontario

**DATES OF HEARING:** November 30, 2009; December 1, 2, 3, 4, and 7, 2009

**REASONS FOR ORDER  
AND ORDER:** ZINN J.

**DATED:** July 19, 2010

**APPEARANCES:**

John W. Bruggeman

FOR THE PLAINTIFF

P. Tamara Sugunasiri  
Shahana Kar

FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

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FOR THE PLAINTIFF

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FOR THE DEFENDANT