



[2022] JMSC Civ. 16

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2017HCV01678

BETWEEN	CEON ALLEN	CLAIMANT
AND	PERCIVAL JOHNSON	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

IN OPEN COURT

Mr. Andrew Irving for the Claimant

Ms. Shaniel Hunter instructed by the Director of State Proceedings for the 2nd Defendant

False Imprisonment – Malicious Prosecution – Whether reasonable and probable cause to prosecute exists – Whether failure to properly investigate indicates malice – Whether initial arrest unlawful- Whether detention unduly lengthy – Aggravated Damages – Exemplary Damages – Sections 3(2), 4(a) of the Bail Act and the Second Schedule to the Bail Act – Sections 13, 15, 18 and 33 of the Constabulary Force Act

Preliminary point – Part 29.1 of the Civil Procedure Rules – Section 31E of the Evidence Act – Effect of failure to serve notice of intention to tender documents into evidence – Overriding objective of the Civil Procedure Rules

HEARD: January 10th, 11th, 12th and February 2, 2022

STEPHANE JACKSON-HAISLEY J.

BACKGROUND

[1] On the 28th day of November, 2012, the Claimant, Mr. Ceon Allen was arrested pursuant to a report made by the first Defendant, Mr. Percival Johnson. This was after Mr. Johnson pointed Mr. Allen out to the police as one of the persons involved in an incident in which Mr. Johnson was shot at, wounded and robbed. On the 3rd day of December, 2012, Mr. Allen was charged for the offences of Illegal Possession of Firearm, Shooting with Intent, Unlawful Wounding and Robbery with Aggravation by Detective Corporal Peter Pike.

[2] Mr. Allen was charged with one other person Mr. Andre Ingram. Consequent upon these charges being laid Mr. Allen remained in custody until he was offered bail on the 14th day of December, 2012. After a period of some twenty-two months, on the 14th day of October, 2014, the matter against Mr. Allen and the co-accused came to an abrupt end when Mr. Johnson attended Court and indicated that he no longer wished to proceed with the matter. The prosecution offered no evidence in the matter and a verdict of not guilty was entered against Mr. Allen and the co-accused.

THE CLAIM

[3] On the 29th day of May 2017, Mr. Allen filed the Claim herein against Mr. Percival Johnson as the first Defendant and The Attorney General of Jamaica as the Second Defendant. In the Claim he indicated that on the 28th day of November, 2012, Detective Corporal Peter Pike, a member of the Jamaica Constabulary Force maliciously and without reasonable cause wrongfully imprisoned and deprived him of his liberty for nine days. Further, that the First Defendant and/or the Second Defendant subsequently maliciously and without reasonable and probable cause prosecuted him for Illegal Possession of Firearm, Shooting with Intent, Unlawful Wounding and Robbery with Aggravation. The Second Defendant is sued pursuant to the Crown Proceedings Act.

[4] His claim is for Special Damages, Damages for Malicious Prosecution, False Imprisonment as well as Aggravated Damages, Exemplary Damages, Interest, Costs and further or other relief. Under the Particulars of Special Damages, he claims a total

of \$680,000.00 with \$200,000.00 for Attorney-at-Law costs and \$480,000.00 for loss of earnings from farming.

[5] On the 15th day of May, 2018, he discontinued the Claim against the First Defendant.

[6] In his pleadings, Mr. Allen averred that on the 28th day of November, 2012 he was walking past the Duhaney Park Police Station when he was accosted by Corporal Adams and taken to the police station. While at the police station, Mr Johnson told Corporal Adams that he knew about the incident and Corporal Adams told him that he cannot say that he knows about the incident but that he had to say he did it or he can't lock him up. Thereafter, Mr. Johnson said "Alright, yes him do it". Mr. Allen was then arrested, handcuffed and taken to the Hunts Bay Police Station where he was maliciously and without reasonable cause charged for the offences mentioned previously.

[7] In the 'Particulars of Malice and Lack of Absence of Reasonable and Probable Cause', Mr. Allen asserted that Mr. Johnson gave a false statement to the police and that Detective Corporal Pike became aware or should have become aware that this statement was concocted. Further, that Detective Corporal Pike thereafter acted without any due regard to his responsibilities and obligations as a police officer and continued with the prosecution of the Claimant. He also stated that Detective Corporal Pike failed to investigate or properly investigate the complaint and/or failed to perform his investigation to the standard required of an investigating officer. He failed to interview and collect statements from numerous persons who were with him when the alleged offences were said to have occurred.

[8] As a consequence, Mr. Allen pleaded that he was wrongfully imprisoned and deprived of his liberty and suffered injury to his character and reputation, and has suffered considerable mental and physical pain and anguish and has been put to considerable trouble, expense and inconvenience, and has sustained loss and damage.

[9] Mr. Allen claimed that he is entitled to Aggravated and/or Exemplary damages, as the conduct of Detective Corporal Pike in maliciously and without reasonable and probable cause depriving him of his liberty for nine days amounted to an abuse of his powers as a police officer and amounted to oppressive, arbitrary and unconstitutional acts. Specifically, that Detective Corporal Pike failed to investigate the allegations of Mr. Johnson, and deprived him of his liberty in a lock up that was dirty, filthy, overcrowded which caused him great distress, discomfort, humiliation and indignity.

THE DEFENCE

[10] In the Defence, it was indicated that Mr. Allen was arrested by Corporal Adams after he was identified by Mr. Johnson as one of two men who accosted him with a gun, injured him and stole his gold chain and pendant on the 10th day of November, 2012. Further, that Mr. Allen was charged after a course of investigations was carried out by Detective Corporal Pike which included obtaining several statements from an eye witness and other individuals and the participation of Mr. Allen in a question and answer session with his Attorney-at-Law. Thereafter, on the 3rd day of December 2012 he was charged by Detective Corporal Pike and a case file was prepared and submitted within reasonable time of Mr. Allen being charged. Further, that Mr. Allen was brought before the Home Circuit Court the following day and that by virtue of the Bail Act, bail can only be considered and granted by a Judge for the offences charged.

[11] It was admitted that on the 14th day of October, 2014, Mr. Allen was acquitted of the charges after the complainant in the matter advised the Court that he did not wish to proceed and no evidence was offered against Mr. Allen. They also averred that at all material times Detective Corporal Pike was acting in the course of his duties as a police officer. It is denied that Detective Corporal Pike acted maliciously and without reasonable and probable cause. It is denied that the Claimant, Mr. Allen was maliciously prosecuted and falsely imprisoned. The "Particulars of Special Damages" was neither admitted nor denied and the "Particulars of Aggravated and or Exemplary Damages" was denied. They also denied liability for any damages.

PRELIMINARY POINT

[12] Before the commencement of the trial a preliminary point was taken. This had to do with whether or not to allow the Second Defendant to rely on a '*Notice of Intention to Tender Documents into Evidence*' which was filed some eighteen days before the trial and for which there was no proof of service on the Claimant or his Attorney-at-Law. Counsel for the Claimant indicated that up to the date of trial he had not been served with the Notice. Despite that, Counsel for the Second Defendant, Ms. Hunter argued that the Court had a discretion to permit the Second Defendant to rely on the evidence contained in the documents which were the subject of this Notice. She relied on the provisions of Part 29.1 of the Civil Procedure Rules (CPR).

[13] Ms. Hunter sought to buttress her argument by relying on the authorities of **National Water Commission v VRL Operators Limited et al** [2016] JMCA Civ. 19 and **Sean Greaves v Sean Greaves and Calvin Chung** [2020] JMCA Civ.118. She also sought in aid the overriding objective of the CPR to deal with cases justly, expeditiously and fairly and argued that it would do greater justice if the Court allowed the Second Defendant to rely on this evidence. Counsel argued that if the Court were to exclude these documents, the exclusion would do more prejudice, as they are relevant.

[14] Ms. Hunter contended that the documents, which are the subject of the '*Notice of Intention to Tender Documents into Evidence*' were previously disclosed in the '*List of Documents*'. Further, the fact that the documents are public documents, the usual requirements were not necessary.

[15] Counsel for the Claimant, Mr. Irving resisted this application by simply pointing out that the provisions of section 31E (2) of the Evidence Act, make it compulsory for the Second Defendant to give notice to the Claimant's Attorney-at-Law at least twenty-one days before the hearing and that the Second Defendant having failed to give any notice should not be allowed to rely on the documents contained in the said Notice. Mr. Irving submitted that regardless of whether or not the documents are public documents, the usual notice provisions would still apply.

[16] The Court considered the provisions of Part 29.1 of the CPR, which provides:

29.1(1) *The court may control the evidence to be given at any trial or hearing by giving appropriate directions as to-*

(a) *the issues on which it requires evidence;*

(b) *the nature of the evidence which it requires to decide those issues; and*

(c) *the way in which the evidence is to be placed before the court, at a case management conference or by other means.*

(2) *The court may use its power under this rule to exclude evidence that would otherwise be admissible.*

(3) *The court may limit cross-examination.*

[17] In my view, that section does not assist Counsel for the Second Defendant. That Rule seems to deal more with the Court's power to control evidence and the way in which it is to be done. Subsection 2 relates more to the exclusion of evidence rather than the inclusion.

[18] The cases relied on by Counsel for the Second Defendant are clearly distinguishable. The **Sean Greaves** case focused more on whether to allow a Claimant to rely on facts not disclosed in the Claim, and although my sister, Thompson-James, J commented on the need to exercise her discretion in the interest of justice, that case is wholly inapplicable to the instant scenario. The **National Water Commission** case is only helpful in the sense that it mentioned the power of the Court to dispense with notice. That case simply highlighted the provisions of section 31E (6) of the Evidence Act, which gives the Court a discretion to waive this requirement of notice. However, the Court may only do so where it thinks it appropriate having regard to the circumstances of the particular case.

[19] In determining whether to waive the requirement, the Court would be bound to consider whether the likely prejudice in doing so outweighs the probative value of the evidence. The fact that these documents were disclosed from as early as 2018 does not necessarily follow that the Claimant would have known that there was an intention to rely on them. The Claimant may well have taken comfort in the fact that there was no intention to rely on them and would have no doubt prepared his case with that in mind. The disclosure of the documents in the Second Defendant's List of Documents demonstrates that the Second Defendant was aware of their existence from the case was being prepared and that this is not something new. In these circumstances, they should have sought to notify the Claimant of their intention to rely on them within the time prescribed by Law.

[20] With respect to the submission that the documents are public documents, I am not convinced of this and find favour with the submissions of Counsel for the Claimant that the documents could not be classified as public documents as they related to a Gun Court file and Gun Court matters are *in camera*. I also agree that even if they were public documents, this would not obviate the need to give notice and for service on the other party.

[21] The Court also considered two cases, **Ann Marie Sinclair and Winston Jackson v Glenroy Mason and Merle Dunkley** C.L. 1995/S – 188, unreported, Judgment delivered August 5, 2009 and **Olga James-Reid v Stephen Clarke and David Davis** C.L. No. J004 of 2001, unreported, Judgment delivered on 5th October, 2007. In the **Ann Marie Sinclair** case, Sykes, J as he then was, provides some useful guidance as to how to treat with the provisions of sections 31E of the Act. The **Olga James-Reid** case, although not a similar case was also useful as it underscored how the Court treated with a situation in which there was non-compliance with section 31E (1). Mangatal, J, as she then was, utilised a strict application to the provision and at paragraph 21 of the judgment prayed in aid an excerpt from the **Phipson on Evidence, 13th Edition, Chapter 17**. Paragraph 17:11 reads as follows:

“17-11. All these provisions are designed to give the other party the opportunity to consider what action to take in response to the desire to give in evidence hearsay statements[.]”

[22] The aim of section 31E (2) is to provide time to the other side to prepare the case adequately, to allow time for Counsel to take adequate instructions and carry out any further checks, if necessary. This is the date set for the trial of the matter. To allow the Second Defendant to rely on this material at this point may well mean that an adjournment may have to be granted to facilitate the attendance of these witnesses, as the Claimant’s Attorney-at-Law has expressly indicated that had he been served he would have objected. This could inevitably lead to an adjournment as the Claimant’s Counsel would have to be given the opportunity to take instructions. This approach would not be in keeping with the overriding objective of dealing with cases expeditiously, justly and fairly.

[23] The Court therefore ruled that the Second Defendant will not be allowed to rely on the Notice of Intention to Tender Documents into Evidence, as it was not served on the Claimant.

THE TRIAL

[24] The evidence is extracted from the witness statements which stood as the evidence in chief of the witnesses and also the cross-examinations that followed.

[25] Mr. Allen testified in support of his case and relied on the testimony of one other witness, as well as certain documentary evidence. Mr. Allen testified that on the 10th day of November, 2012, he and at least seven other persons were cleaning and clearing a football field near his house in Duhaney Park, when at about 4:30pm he heard what sounded like two gunshots. He and others left and went to Mr. Johnson’s house where he saw some policemen including Corporal Adams putting yellow tape around Mr. Johnson’s house.

[26] Mr. Allen indicated that previously, he and Mr. Johnson had an issue over a house Mr. Johnson wanted to purchase but that he was put in charge of the house. He had also previously had an altercation with Corporal Adams in September 2010. After the altercation, Mr. Allen made a report to the Police Complaint Division, alleging that Corporal Adams had assaulted him. Following the report, Corporal Adams was charged for Assault. Counsel for the Claimant tendered into evidence the Customer Reference Form which showed that Mr. Allen had in fact made a report. Mr. Allen stated further that two weeks after the incident the Corporal had vowed to him that he would get his revenge.

[27] Subsequently, on November 28, 2012 whilst walking along Duhaney Drive, he was accosted by two policemen and taken to the Duhaney Park Police Station. Whilst there, Mr. Johnson approached him and said to Corporal Adams, who was also present that "Him know about it". He alleged that Corporal Adams then said that, "You can't say him know about it. Yu haf fi say him do it or wi can't lock him up." Mr. Johnson then said, "Alright, yes him do it." Thereafter, Corporal Adams transported him to the Hunts Bay Police Station. Whilst on way to the police station, he told Corporal Adams that he and Mr. Johnson were good friends and accused him of having set him up. Corporal Adams did not respond.

[28] Mr. Allen alleged that whilst in the holding area he heard Detective Corporal Pike telling another police officer to put him in the cell where the bad men were so they could beat him. He is of the belief that Detective Corporal Pike did not adequately or properly investigate the case before arresting and charging him and that he acted maliciously. He failed to take any statements from persons who were present with him at the football field. He asserts that statements were taken from witnesses to include one Mr. Christopher Manyan, otherwise called "Bushman" and an eye witness, Mr. David Edwards who gave a statement indicating that Mr. Allen was not present at the incident. He alleged that Detective Corporal Pike did not disclose to his Attorney-at-Law the statement taken from Bushman, nor did he consider the role played by Corporal Adams and his motive for having him arrested and charged. He asserted that Detective

Corporal Pike knew or reasonably ought to have known that the statement given by Mr. Johnson was untrue.

[29] Mr. Allen was first taken to Court on the 7th day of December, 2012 and so he is claiming to have been falsely imprisoned for nine days. He was kept in custody at the Hunts Bay Police Station until being granted bail on the 14th day of December, 2012. He spent a total of sixteen days in the cell under conditions which were uncomfortable as there were twenty-two persons therein and he could not lie down but had to stand up and sleep. In addition, the cell was filthy and had cockroaches and other insects. He was also beaten by a policeman.

[30] As a result of what transpired, he has suffered embarrassment, humiliation, loss of dignity and distress. After attending Court for ten occasions and over a period of twenty-two months he was acquitted of the charges following Mr. Johnson's indication that he did not want the case to go further.

[31] As a consequence of being in custody, his crops were stolen and/or damaged and he suffered losses to the tune of \$480,000.00. He paid his Attorney-at-Law \$200,000.00 to represent him.

[32] Additionally, as a consequence of these charges he lost the opportunity to travel overseas to attend his mother's wedding as the United States Embassy refused to grant him a visitor's visa. He is of the view that his application was being treated favourably until he provided the Embassy with a letter from the Gun Court. As a consequence, he was embarrassed, upset and distressed due to the lost opportunity.

[33] The Court has taken into account all the evidence unearthed through cross-examination. However, certain portions bear repetition and are set out below:

[34] In cross-examination, Ms. Hunter questioned Mr. Allen about whether the name of Corporal Adams was written on the Customer Reference Form and he agreed that it did not bear the name of the officer. Mr. Allen was asked whether there is any reference in the Particulars of Claim to Corporal Adams having no reasonable and probable cause

to arrest him. The witness was also asked to look at the document provided. After looking at the Particulars of Claim, the question was repeated and his answer was that Corporal Adams acted unreasonably. He was again asked whether he agreed that the statement that Corporal Adams was charged with assaulting him in 2010 was not previously stated in any documents filed before this Court and his response was, "What happened with Cpl Adams, I was getting phone calls from Police Officers Club". It was suggested to him that the reason the first mention of this is in the witness statement is because it is not true but he disagreed with this suggestion.

[35] It was suggested to him that Detective Corporal Pike did not know him before the incident and he agreed with that suggestion.

[36] In re-examination, he indicated that when he attended Court on the 7th day of December, 2012, his name was not called and so the first time he faced the Court was the 14th day of December, 2012.

[37] The Claimant's witness, Mr. Rashive Cornwall testified that on the 10th day of November, 2012 he was among a group of seven persons cleaning and clearing the football field at Caldwell Avenue in Duhaney Park and that Mr. Allen was one of the persons in the group. At about 4:30pm, Mr. Cornwall heard what appeared to be gunshots and thereafter, based on certain information he, along with three other persons, including Mr. Allen proceeded to Mr. Johnson's house to find out what was happening. While at Mr. Johnson's house, Mr. Cornwall stated that he observed police officers putting a yellow tape around the house. He indicated that Mr. Allen could not have committed any offence at that time. Mr. Cornwall further indicated that at least four of the other persons went to the Duhaney Park Police Station to give statements and he was advised by a police officer, who he identified in Court as Detective Corporal Pike that Mr. Allen was alright and that he had spoken to the 'baby mother' of Mr. Allen already. He was surprised to learn that the police had still charged Mr. Allen.

[38] This witness had a dual purpose. He also gave evidence that he knew Mr. Allen to be a farmer and cable technician and that he knows him to have a farm in Coopers

Hill, where he grows bananas, plantains, gungo peas, ginger and other crops and rears pigs. He had visited his farm several times, the last time before November 10, 2012, being September 2012 when he assisted with the planting of some crops.

[39] In cross-examination, Mr. Cornwall was asked how often he visited the farm to assist the Claimant prior to November 2012 and he replied that it was like every weekend and sometimes three times a week. When asked about his pay he said he would be paid some \$2500.00 per day for the work that he did.

[40] The Second Defendant relied on the testimony of one witness, Detective Corporal Peter Pike (now Detective Sergeant). He indicated that on the 10th day of November, 2012 he received certain information which led him to the scene of a shooting along Faulkner Avenue in the Duhaney Park area. On arrival, he observed spent shells and blood both inside and outside the premises of Mr. Percival Johnson. The scene was processed following which he proceeded to the Kingston Public Hospital (KPH) where he saw and spoke to the complainant who gave him certain information and showed him a wound to the right top of his head. He then commenced investigations into a case of Illegal Possession of Firearm, Unlawful Wounding, Shooting with Intent and Robbery with Aggravation. Mr Johnson thereafter gave a written statement outlining the incident and implicated two men who were known to him.

[41] He indicated further that on November 12, 2012, he revisited the scene and spoke to several persons. However, persons were tight lipped and he received no useful information. On November 28, 2012, Corporal G Adams pointed out the Claimant to him at the Hunts Bay Police Station as being the man who the complainant pointed out as one of the suspects involved in the incident he reported. He told Mr. Allen of the allegations made against him and he responded, "a lie dah man deh a tell pon me".

[42] He told him of his intention to interview him in the presence of his Attorney-at-Law and caused him to be placed in the lock up. On December 1, 2012, he was advised that another suspect, Mr. Andre Ingram was pointed out and he also arranged for an interview to take place with this suspect. During the course of his investigations, he

collected statements to include one from Mr. David Edwards, who provided him with information about a possible suspect. However, no one confirmed knowledge of that individual. On December 3, 2012, he charged both Mr. Allen and Mr. Ingram.

[43] Detective Sergeant Pike further expressed that neither of the two suspects nor the complainant was previously known to him and that he did not act in malice but rather caused both suspects to be further detained pending further investigations and later charged them because he had reasonable cause to do so based on the following circumstances: (i) they were pointed out by the complainant as the persons who robbed him and shot him; (ii) both verbal and written statements received from the complainant; (iii) statements given by witnesses; (iv) observations at the crime scene which substantiated that a shooting may have taken place and (v) having observed the complainant's injuries.

[44] Permission was granted for Detective Sergeant Pike to give further evidence through amplification and this related in large part to asking him to comment on the evidence given by the Claimant. He indicated that he was not aware of any statement given by Christopher Manyan or "Bushman" and that the matter of Mr. Allen cleaning the football field was never brought to his attention. However, he agreed that he took a statement from Mr. David Edwards and emphasised that he did take the statement into account and so he submitted it to the Court for the Court to determine guilt or innocence.

[45] He volunteered that he could not say whether or not Mr. Johnson's statement was untrue, hence the reason why the matter was brought before the Court for a determination to be made. He also pointed out that it was only recently that the fact of an incident involving Corporal Adams and Mr. Allen was brought to his attention. He did not recall speaking to or seeing Mr. Cornwall before the day in Court.

[46] In cross-examination, he was asked whether the case file was submitted on December 11, 2012. However, his response was that he cannot recall the date. When

asked if he attended Court on December 14, 2012 when the matter was first listed he said he remembered attending Court but cannot speak to the specific date.

[47] It was suggested to him that between November 10 and November 28, 2012, he at no time visited the home of Mr. Allen and he agreed with that suggestion. However, he denied the suggestion that Mr. Allen on the 28th day of November, 2012 told him that he had made a complaint against Corporal Adams for assaulting him. It was further suggested that his motive for detaining Mr. Allen was to support his friend and 'squaddie' Corporal Adams, and not to bring anybody to justice. His reply was that he did not know Mr. Allen before and that his motive was to bring Mr. Allen before the Court based on the statements given. It was also suggested to him that he did not investigate Mr. Allen's alibi before he charged him and he said he was not made aware of an alibi. It was suggested to him that he had information from an alleged eye witness that Mr. Allen was not present and yet he agreed with this. It was thereafter suggested that he did not take that into consideration before he charged Mr. Allen and that he acted maliciously. His response was that he did take it into consideration and that is why this statement was placed on file and sent before the Court for the Court to determine guilt or innocence

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[48] Counsel on behalf of the Claimant, Mr. Irving submitted that with respect to False Imprisonment, the Court should be satisfied that there was a restraint not authorised by law or an arrest without legal justification. He contended that even if the court finds that the initial detention is lawful, if the arrested person was detained for an unreasonably long period of time the arrest may become unlawful.

[49] The test is both subjective and objective, the subjective test being that it must be based on reasonable suspicion and the objective test being that the reasonable suspicion must be based on reasonable grounds. He relied on the case **Peter Flemming v Detective Corporal Myers and The Attorney General of Jamaica** (1989) 26 JLR 525 (CA).

[50] Based on the evidence, he submitted that, Detective Sergeant Pike did not have reasonable grounds to arrest the Claimant and that he did not have an honest belief in his guilt when he arrested him. He referred to **Hicks v Faulkner** QB (1878) 167, for the view that Detective Sergeant Pike must have had an honest belief in the guilt of the accused.

[51] He pointed out that Detective Sergeant Pike failed to check the alibi of the people who claimed they were cleaning and clearing the football field. He also relied on the authorities of **Allan Currie v The Attorney General of Jamaica** C.L. 1989/C-135, unreported, Judgment delivered on the 10th August, 2006 and **Jerome Freckleton v The Attorney General of Jamaica and Detective Sergeant Maurice Puddie** [2018] JMSC Civ. 127.

[52] He pointed out that under section 3(2) of the Bail Act, persons should not be held in custody without bail being considered within 24 hours and so even if the initial detention is lawful, if he was held for an unreasonably long period then the arrest becomes unlawful. A file was not submitted until December 11, 2012, so the question of bail could not have been considered and Mr. Allen was brought before the Court on the 14th day of December, 2012, which would be a period of seventeen days.

[53] He asked the Court to take into account that the Claimant was kept in deplorable conditions at the Hunts Bay Police Station.

[54] With respect to Malicious Prosecution, he submitted that all the factors known to the investigating officer at the time should be considered. According to Mr. Allen's witness statement, when Corporal Adams states that, "Yu cyan seh him know 'bout it. Yu haffi say him do it or wi cyan lock him up," is a strong factor. Another strong factor is that it is uncontested that Mr. Allen knew Mr. Johnson for about seven years up to 2012. In Detective Sergeant Pike's cross-examination, he revealed he was never told where Mr. Allen lives. The fact that he never went to his house brings into question whether the officer is being truthful or whether Mr. Johnson really told him about the incident.

Finally, the officer's constant response that "I cannot recall" is an indication of an untruthful witness.

SUBMISSIONS ON BEHALF OF THE SECOND DEFENDANT

[55] With respect to False Imprisonment, Counsel for the Second Defendant, Ms. Hunter also relied on the principles enunciated in the authority of **Peter Flemming v Detective Corporal Myers and The Attorney General of Jamaica** (supra) to support their position that the Claimant was not falsely imprisoned.

[56] She also relied on section 4(a) of the Bail Act and the Second Schedule for their position that only a Court could consider bail for the offences for which the Claimant was charged. She referred to sections 13, 18 and 33 of the Constabulary Force Act to emphasize the point that police officers have a statutory right to arrest where there is reasonable suspicion of an offence being committed. Further, that in order to be successful in the action the Claimant must prove that the second Defendant acted maliciously or without reasonable and probable cause. To prove False Imprisonment, the Claimant must prove that: (i) he was detained without legal justification and (ii) the period of detention was unduly lengthy.

[57] She submitted that the onus is on the Claimant to prove that the length of time it took for him to be taken to Court was unduly lengthy. The burden may shift to the Defendant to show that the period was reasonable where the period of detention was unduly lengthy. Based on Detective Sergeant Pike's statement, reasonable and probable cause existed to charge Mr. Allen. The actions of the officer were actions of a policeman who acted reasonably.

[58] She submitted that reasonable and probable cause to arrest and detain arose on November 28, 2012 when Corporal Adams brought Mr. Allen to Detective Sergeant Pike's attention. Counsel pointed out that from the actions of Detective Sergeant Pike during the investigation, the Court can draw an inference that these are the actions of someone acting without malice. The actions taken include: (i) acting on the complainant's written statement; (ii) visiting the scene to confirm the incident and that

the complainant was shot and injured and (iii) having both suspects (Mr. Allen and Mr. Ingram) undergo the same processes required by law when persons are suspected of committing a criminal offence. With respect to whether there was unduly lengthy delay in bringing the Claimant before the Court, she also relied on **Denese Keane-Madden v The Attorney General of Jamaica and Corporal T. Webster-Lawrence** [2014] JMSC Civ. 23, which addresses the circumstances in bringing a person to Court.

[59] She submitted further that in order to prove False Imprisonment, the Claimant must prove that the delay must be unexplainable and undue. Bringing court files before the Court involves a process. She asked that the Court have regard to same and that it is general knowledge that it is the Court that sets court dates and not the police.

[60] The evidence shows that between December 10 and December 14, 2012, there was an explanation for the delay. Between December 3 and 7, 2012, the file was being compiled and November 30 to December 1, 2012 was a weekend. Mr. Allen was brought before the Court the first time on December 7, 2012 and by December 14, 2012 he was granted bail.

[61] Regarding the elements of Malicious Prosecution, the authority of **Denese Keane-Madden v The Attorney General of Jamaica and Corporal T. Webster Lawrence** (supra), para 32 – 33, provides that at common law, the requirements that must be proved are that the Defendant must have acted maliciously and without reasonable and probable cause in initiating the criminal prosecution, which ended in the Claimant's favour and resulted in damage to the Claimant's reputation. A failure to prove one or more of these requirements means the Claimant fails. Therefore, it was her submission that having submitted all the statements that he took during his investigation, Detective Sergeant Pike did not act maliciously or without reasonable and probable cause.

ISSUES

[62] The issues that arise can be summarised in this way:

1. Is the Second Defendant liable for Malicious Prosecution
2. Is the Second Defendant liable for False Imprisonment

LAW AND APPLICATION

Malicious Prosecution

[63] Both Counsel for the Claimant and Counsel for the Second Defendant in their submissions have correctly identified the elements required to succeed in an action for Malicious Prosecution. They are repeated here for the purpose of thoroughness. In order to succeed, the Claimant must prove on a balance of probabilities: (a) that the law was set in motion against him on a charge for a criminal offence; (b) that he was acquitted of the charge or that otherwise it was determined in his favour; (c) that the prosecutor set the law in motion without reasonable and probable cause; and (d) that in so setting the law in motion the prosecutor was actuated by malice...¹

[64] Put another way, a Claimant alleging Malicious Prosecution is required to prove that “the defendant was actuated by malice and that he had no reasonable and probable cause for prosecuting...”².

[65] Separate and apart from judicial decisions which have delineated these essential elements, there are provisions under the Constabulary Force Act which further provide guidance. Sections 13, 15, 18 and 33 are worthy of note. By virtue of the first three sections mentioned police officers have the statutory right to arrest persons under

¹ See *Wills v Voisin* (1963) 6 WIR 50 at page 57

² See *Glinski v Mclver* (1962) 2 W.L.R. 832 at page 856

circumstances where they reasonably suspect that the person has committed an offence, this they can do even without a warrant in certain circumstances. Section 33 sets out the requirement that any action brought against an officer for an act done in the execution of his office must be brought in tort and there must be proof that such act was done either maliciously or without reasonable and probable cause. Failing such proof, the action brought must fail.

[66] In this case much emphasis has been placed on ‘malice’ such that it would be helpful to understand its meaning. Malice is defined in the **Flemming** (supra) case in this way at page 535 of the judgment:

*“...For the purpose of malicious prosecution ‘malice’ covers not only spite and ill-will but also any motive than a desire to bring a criminal to justice.”-
per Lord Devlin in **Glinski v McIver** (supra).*

[67] Equally, an understanding of what is ‘reasonable and probable cause is essential’. The essence of what is meant by reasonable and probable cause was set out in **Hicks v Faulkner** by Hawkins, J at page 177 as follows:

“Now I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be: first an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly, such secondly-mentioned belief must be based upon reasonable grounds; by this I mean such grounds as would lead any fairly cautious man in the defendant’s situation so to believe; fourthly, the circumstances so believed and relied on by the accused must be such as amount to reasonable grounds for belief in the guilt of the accused.”

[68] The Claimant herein has no difficulty in establishing that he was charged with a criminal offence and that he was subsequently acquitted of same. The challenges he faces have to do with whether or not he can establish on a balance of probabilities that the prosecutor set the law in motion without reasonable and probable cause and/or that the prosecutor was actuated by malice.

[69] The case **Jerome Freckleton v the Attorney-General of Jamaica and Det. Sgt. Maurice Puddie** (supra) relied on by Counsel for the Claimant, bears some similarity to the instant one and so has provided this Court with great assistance. Following a shooting incident, Mr. Freckleton was arrested and charged for the offences of Illegal Possession of Firearm and Ammunition and Shooting with Intent. He alleged that these charges were laid on the premise that he was one of the gun men firing shots at the police. He however, alleged that he was at another location assisting police personnel to remove his relatives to the KPH and that whilst at a bus stop on way to KPH to visit them the police arrested him. He was pointed out by one of the policemen as being one of the men who fired at them. He spent twenty months in custody following which he was tried and a no case submission upheld in his favour. He thereafter brought a claim for Assault, Malicious Prosecution and False Imprisonment.

[70] The Court rejected Mr Freckleton's claim for Malicious Prosecution but found that he had proven his claims for False Imprisonment and Assault. With respect to the Malicious Prosecution, my brother carefully dissected the evidence before him and found that there was an absence of proof that the officer did not have reasonable and probable cause to prosecute him. Paragraph 56 of the judgment is helpful in understanding how the Court arrived at its decision:

"In my opinion, the information available to the 2nd defendant was sufficient to reasonably lead any ordinarily prudent and cautious investigator, to conclude that the claimant was probably guilty of the offences with which he was charged. Probability of guilt is just another way of saying there was a prima facie case. If that is accepted, then he had reasonable and probable cause to prosecute the claimant. The fact that a subsequent judicial enquiry concluded that the claimant should not

be called upon to answer the charges does not dilute the contention that on an objective assessment of the material available to the 2nd defendant, the probability of guilt was concluded”.

[71] The uncontested evidence in the instant case is that the prosecutor was Detective Sergeant Pike, as it was this officer who arrested and charged the Claimant. This was after he was apprehended by Corporal Adams who pointed him out to Detective Sergeant Pike as the person identified by the complainant as one of the suspects involved in the incident reported. It is clear therefore that Detective Sergeant Pike did not act of his own accord but rather pursuant to what he was told. The Claimant has alleged spite and ill-will on the part of this officer so the Court has to consider whether there is evidence to support this.

[72] I have carefully scrutinized the case presented by the Claimant and on his behalf. The first point worthy of note is that there exists some discrepancy with what was pleaded and the evidence led. In the “Particulars of Malice and Absence of Reasonable and Probable Cause”, there was no indication of any malice on the part of Corporal Adams and that Detective Sergeant Pike was aware of this. The focus of the malice was clearly on the First Defendant. It was in the witness statement that it was first expressed that there was a previous altercation with Corporal Adams wherein the Claimant was assaulted by the officer, following which Corporal Adams was charged for Assault and that this was brought to the attention of then Detective Sergeant Pike. It was in the evidence that it was first indicated that Detective Sergeant Pike did not consider the role played by Corporal Adams in this case and his motive for having him arrested and charged.

[73] The focus of the pleadings was that it was the First Defendant who ‘falsely and maliciously gave a statement to the police that the Claimant and another man shot at him and robbed him of his gold chain’ and so it would have been expected that the evidence would demonstrate firmly and without the need to speculate as to whether

Detective Sergeant Pike was aware that the First Defendant was acting maliciously and had concocted this case against the Claimant. The evidence led fell short of that.

[74] The allegation that the Claimant had brought to the attention of Detective Sergeant Pike the issue he had with Corporal Adams brings into play the question of credibility. There is also the question of whether the Claimant had told Detective Sergeant Pike that Mr. Johnson had initially only said he knew about the robbery and that it was Corporal Adams who told him to say that the Claimant did it. I have assessed both witnesses and found Detective Sergeant Pike to be more credible on this point and generally.

[75] The Claimant was evasive in some of his answers, failing to give clear answers to several questions in circumstances where a clear answer would have been expected. Although Detective Sergeant Pike's response to many of the questions was that he cannot recall, I did not find this to be an indication of untruthfulness but rather that since some of what was suggested was being said for the first time in the evidence that he perhaps genuinely could not recall. To strengthen my view in terms of credibility, is the fact of the failure on the part of the Claimant to mention essential facets of his case on the first opportunity he had so to do.

[76] When I examine the Particulars of Claim, there was nothing in it that suggested that this officer was aware of the malice harboured by Corporal Adams. The "Particulars of Malice and Lack of Reasonable and Probable Cause" pleaded seemed to have centered around Detective Sergeant Pike being aware that Mr. Johnson harboured malice and that his account was concocted.

[77] I am not satisfied on a balance of probabilities that the issue with the Claimant and Corporal Adams was brought to the attention of Detective Sergeant Pike during the course of his investigations. I accept the evidence of Detective Sergeant Pike that he learnt of this only recently. Even if the fact that Corporal Adams had told the complainant to say he did it and the fact of the Assault case against the officer were brought to the attention of Detective Sergeant Pike, this would not of itself mean that he

harboured malice or that he acted without reasonable and probable cause. He would have been required to investigate these allegations fully. However, in the circumstances of this case, with what he had he may still have found himself in a position where as he said he had to put everything before the Court for the Court to decide.

[78] The circumstances of this case were not only that he acted on the report made by Mr. Percival Johnson, but also the uncontested evidence before this Court that there was in fact a shooting incident involving Mr. Johnson. The Claimant and his witness also spoke of this shooting incident. The officer visited the scene and processed the scene and made certain observations to include taking note of blood stains. He thereafter proceeded to the KPH where he spoke to Mr. Johnson and observed a wound to his head. He subsequently on the 21st day of November, 2012 gave him a written statement implicating two men who were known to him. The identity of these two men was later brought to the attention of Detective Sergeant Pike firstly, when Corporal Adams pointed out the Claimant to him on the 28th day of November, 2012 and on December 1, 2012 in respect of the other man. With respect to the Claimant, he said that Corporal Adams pointed out the Claimant as one of the suspects who was involved in the incident reported. Under those circumstances it would be difficult to say that the officer should not have charged the Claimant.

[79] The Claimant has alleged that the officer failed to investigate or investigate properly or to perform his investigation to the standard required of an investigating officer. To my mind, the Claimant has succeeded to proving that certain aspects of the investigations were lacking. Although, he was unable to successfully challenge the officer's assertion that he went into the community and interviewed community members who were tight lipped, what was established through the cross-examination was that the officer could have gone a step further. It is alarming that although the officer was advised that the suspects were living in the community where Mr. Johnson resided, he never went in search of this/these alleged suspect/s who would have been alleged to be in possession of a firearm. On his own account, at the very least, he would have been aware of this from the 21st day of November, 2012 when he recorded the

complainant's statement but up to the 28th day of November, 2012 had not gone in search of the Claimant.

[80] I also note a blatant inconsistency on the part of Detective Sergeant Pike where he at first indicated that he was not aware that the Claimant had an alibi but when taxed further, admitted to taking a statement from a witness who said the Claimant was not present. That lends support to the Claimant's point that there was a lack of proper investigation in the matter. Does this mean therefore that there was malice on the part of the officer? I am not convinced of that.

[81] Although the fact of shoddy or poor investigation does not equate to malice, it could cause one to wonder if the lack of proper investigation was actuated by any ill motive or ill-will and so I have considered this. It is the uncontested evidence that the officer did go into the community and interview community members, however this exercise proved futile. This indication is not difficult to accept. Even if several witnesses had come forward to indicate that the Claimant was elsewhere it would have been incumbent on the officer to investigate this further because of Mr. Johnson's account. It would have been expected that the officer would place all he had before the Court for a judicial decision to be made.

[82] The witness, Mr. Cornwall spoke about going to the police station with at least four other persons to give statements as to the whereabouts of the Claimant and that he was advised by the police officer that Mr. Ceon Allen was alright and that he had spoken to his 'baby mother' already. In Court, he identified Detective Sergeant Pike as that officer. The Claimant is asking the Court to say that under these circumstances, the officer should have taken statements from these witnesses or at the very least interviewed them but he failed to do so. If this were true, it would again impact the nature of the investigation carried out by the officer. However, the weight to be attached to his evidence is questionable. The officer says this is the first time he is seeing Mr. Cornwall. I found it too convenient that Mr. Cornwall only gave evidence of seeing him on one occasion almost ten years ago in what could be described as a passing encounter and without giving any indication as to how he was able to identify him in

Court wearing a mask. I found his evidence on this point to be very suspect and so preferred the evidence of Detective Sergeant Pike that this was the first time he was seeing Mr. Cornwall.

[83] It has not been denied that the officer took a statement from a Mr. David Edwards, whose evidence seemed to have pointed at other suspects and to the fact that the Claimant was not present at the time. It is my view that the officer could have further investigated this. However, I note that this was a witness who was brought to his attention by the mother of the other suspect. There was also the indication of another statement being taken from another person named Christopher Manyan o/c "Bushman". The officer's response was that he put everything before the Court. It is not difficult to understand why the officer would have done this. The very independence of Mr. Edwards, Mr. Manyan as well as Mr. Cornwall would have been questionable. This is what the officer said he did, that "he took the statement of Mr. Edwards into consideration and that is why this statement was placed on file and sent before the Court for the Court to determine guilt or innocence". It could also be viewed that if the officer harboured malice then in the same way it is being suggested that he did not disclose the statement of a Bushman, why then would he disclose the statement of Mr. Edwards?

[84] There is also no evidence that he knew the Claimant before from which some improper motive could be proven and in my opinion on a balance of probabilities, having considered all the circumstances of this case, I am not satisfied that there was any malice or ill motive harboured by Detective Sergeant Pike.

[85] There is also the question of whether Detective Sergeant Pike has reasonable and probable cause to prosecute the Claimant. In assessing this, I have to consider whether Detective Sergeant Pike had an honest belief in the guilt of the Claimant. The burden is on the Claimant to prove that the officer did not possess reasonable and probable cause. The unchallenged evidence is that Detective Sergeant Pike, prior to charging the Claimant had in his possession a statement from the complainant, information that the Claimant had been pointed out by the complainant as one of the

persons involved in the incident in which he was robbed, shot at and wounded. All of this would have provided ample material to take this case outside of the realm of mere suspicion and put it in the context of a case in which an ordinarily prudent and cautious investigator could conclude that the Claimant was probably guilty of the offences alleged. It could not properly be said that in these circumstances he acted without reasonable and probable cause

[86] It is difficult to agree that short of carrying out more thorough investigations, he could have done differently in a case of this gravity. Cases involving firearms are treated quite seriously in the Jamaica in which we live, so it begs the question; how could he not have charged under these circumstances? As a prudent officer he would have been obliged to charge Mr. Allen. Under all the circumstances of this case. the Claimant has therefore failed to establish on a balance of probabilities the tort of Malicious Prosecution.

[87] That is not the end of the case as I am still required to determine whether or not the Second Defendant is liable for the tort of False Imprisonment.

False Imprisonment

[88] The tort of False Imprisonment arises where a person is detained against his will without legal jurisdiction (justification). The legal justification may be pursuant to a valid warrant of arrest or where by statutory powers a police officer is given a power of arrest in circumstances where he honestly and on reasonable grounds believes a crime has been committed.”³

[89] Having found that there was no case of Malicious Prosecution and that there existed reasonable and probable cause to arrest the Claimant it would mean that this initial arrest was lawful. However, the dicta of Carey P. in the **Flemming** (supra) case makes it clear that despite this “an action for false imprisonment may lie where a person

³ Fleming (supra)

is held in custody for an unreasonable period after arrest and without either being taken before a Justice of the Peace or before a Resident Magistrate.”⁴ Carey P went on to say at page 530 of the judgment:

“...Where however, he is kept longer than he should, it is the protracted detention which constitutes the wrong, the “injuria”. This abuse of authority makes the detention illegal ab initio. I see nothing either in principle or in authority to prevent an action for false imprisonment. Indeed, it is a valuable check on abuses of authority by the police.”

[90] The Bail Act has sought to re-affirm the Constitutional provisions that a person is entitled to be taken to Court without delay. By virtue of the provisions of section 3(1) and (2), Mr. Allen had a right to be taken to Court within 24 hours of being arrested. In this case, it took seventeen days. He therefore did not have the opportunity to have bail considered on his behalf until then.

[91] Brooks, J in the consolidated judgment of **Rayon Wilson v the Attorney General of Jamaica and Detective Meeks 2006 HCV 3368** and **Howard Hassock v the Attorney General of Jamaica and Detective Meeks 2006 HCV 4368** delivered on the 18th May 2011 at page 17 applied the learning from the Court in the **Flemming** case and expressed a proposition with which this Court finds favour:

“Persons detained have a constitutional right to be taken to court without delay although the bail end (sic) as it ensued, they would have the question of bail considered within 24 hours. Mr Hassock was detained for seven days before he was so brought. There is absolutely no justification for the delay to say that he was waiting for Mr Hassock to get a lawyer, is simply not good enough. Detective Sergeant Meeks’ real motivation was to question Mr Hassock before charging him and that is what will result in the improper detention following from the ‘Flemming’ case.”

⁴ Carey P (supra) at page 530

[92] This case was among the cases considered by my brother, Brown, J in the case of **Jerome Freckleton v the Attorney-General of Jamaica and Det. Sgt. Maurice Puddie** (supra). Brown, J examined the enshrined right to liberty and observed that both under the Charter of Fundamental Rights and Freedoms and the Constabulary Force Act the Claimant had a right to be taken to face the Court without delay. He considered the judgment in **Flemming** and at paragraph 79 of the judgment arrived at the position that:

“... In my opinion, however the constitutional injunction is to take the arrested or detained person before the court or authorized officer, in the first place, forthwith. If he cannot be taken forthwith, then the alternative is to do so “as soon as is reasonably practicable”. In practice “as soon as is reasonably practicable” is treated as the default position although the framers of the Charter have specified it as an alternative”.

[93] Detective Sergeant Pike gave evidence of what took place between the time of arrest and the time of charge, and although he did not offer it by way of an explanation, I take it into account. Based on what he outlined, it took him from the 28th day of November, 2012 to the 3rd day of December, 2012 to arrange for and execute the interview, as well as to carry out further investigations. I also note that during that period the co-accused was apprehended so arrangements were made in respect of both of them. I have examined that part of the evidence and I did not find that period of time to be an unreasonable one within which to carry out investigations and to arrange for the interview. This is especially so in light of the fact that there was the intervening factor of another suspect being taken into custody.

[94] I am therefore satisfied on a balance of probabilities that it was not reasonably practical to take the Claimant before the Court before the 3rd day of December, 2012. The 3rd day of December, 2012 was the day of the question and answer interview with Mr. Allen and the day on which he was charged. However, the accused having been charged on the 3rd day of December, 2012, there is no explanation in the evidence given for why it took up to the 14th day of December, 2012 for the accused to face the

Court. Having been charged, the officer had an obligation to ensure that he complied with the provisions of the Bail Act to take the accused before the Court within twenty-four hours.

[95] It was incumbent on the officer to ensure that the Claimant faced the Court within this time because the matters for which he was charged were not matters for which bail could be offered outside of the Court.⁵ Throughout the evidence there was no explanation offered for the delay in taking him to the Court. The Claimant had indicated that he was taken to Court on December 7, 2012. However, the further evidence was that although he was taken to the physical court on that day, he was not placed before a Judge until December 14, 2012. Again, there was no explanation provided for this, except to say in the Defence there was some indication that the case file was submitted on the 11th day of December, 2012. That however is not evidence on which the Court can act.

[96] Detective Sergeant Pike in his evidence could not seem to remember the dates on which the Claimant was taken to Court so there is no evidence from the Defendant as to when they are saying he was taken to face a Judge and also no reason for this inordinate delay. On December 14, 2012 the Claimant was offered bail. Counsel for the Second Defendant has asked that I take into account the fact that it takes time for a case file to be prepared but Detective Sergeant Pike himself did not offer this as a reason for the delay moreover, even if he had done so, the Court would still have found it to be an unreasonably long time bearing in mind that the officer commenced his investigations from the date of the incident on November 10, 2012.

[97] Upon an examination of the **Flemming** and **Hassock** cases, the doctrine of 'relation back' is useful to the facts of this case. The doctrine of 'relation back', applied in those cases suggests that an initial proper or lawful detention may become a wrongful or unlawful detention. In reviewing the timeline of events and Court

⁵ See the Second Schedule of the Bail Act

proceedings, the evidence is clear that the Claimant was detained and taken into custody on the 28th day of November, 2012. He was thereafter charged on the 3rd day of December, 2012. The first time the Claimant was brought before the Court was on the 14th day of December, 2012 and on the same day, he was granted bail. In my view, the Claimant, having been charged on the 3rd day of December, 2012, should have been brought before the Court “as soon as [was] reasonably practicable”, which would have been December 4, 2012.

[98] In the circumstances, there was no reason or justification given for detaining the Claimant for an additional ten days after being charged. The Claimant’s further detention was therefore unreasonable, and as a result unlawful.

ASSESSMENT OF DAMAGES

False Imprisonment

[99] In the pleadings, the Claimant avers that he was falsely imprisoned for nine days. Although Mr. Irving sought an amendment to extend this to eleven days, this was not granted based on the late time at which it was sought and the fact that the information supporting the application would have been within the knowledge of the Claimant himself from the inception of this case. The Court therefore will assess False Imprisonment based on the nine days claimed.

[100] Written submissions were filed on behalf of both parties. On behalf of the Claimant, reliance was placed on the following cases:

- (a) **The Attorney General v Peter Badoo** [2020] JMCA Civ. 10
- (b) **Thompson v Commissioner of Police of the Metropolis** [1998] QB 498 (CA Eng)
- (c) **The Attorney General v Glenville Murphy** [2010] JMCA Civ. 50
- (d) **John Crossfield v The Attorney General et al** [2016] JMCA Civ. 40

[101] Counsel for the second Defendant placed reliance on these cases:

(a) **Maxwell Russell v The Attorney General for Jamaica and Corporal McDonald** Claim No. 2006 HCV 4024, unreported, Judgment delivered on 18th January, 2008

(b) **The Attorney General of Jamaica v Tanya Clarke Supreme Court** Civil Appeal No. 109 of 2002, unreported, Judgment delivered 20th December, 2004

(c) **Conrad Gregory Thompson v The Attorney General of Jamaica** Claim No. HCV 02530 of 2008, unreported, Judgment delivered on 31st May, 2011

[102] Based on the cases above, Counsel for the Claimant submitted that an award of \$2,100,000.00 would be an appropriate one.

[103] The Claimant gave evidence of what he endured whilst in custody. The Second Defendant was unable to successfully challenge the conditions under which he was held. I therefore accept the evidence of the Claimant that the cell at the Hunts Bay Police Station was filthy, the floors and walls had faeces and urine and that there were rats, cockroaches and other insects in the cell. I accept that there were some twenty-two persons in the cell and that he had to stand up and sleep and further that he felt humiliated and felt a sense of loss of dignity. I find that this case bears some similarity to the **Maxwell Russell** case and so I think a graduated award would be appropriate to reflect the shock of the first day under the conditions outlined.

[104] I also find the **Bandoo** and the **Crossfield** cases to be quite instructive but prefer the **Bandoo** case. The Court in **Bandoo** upheld the award of \$250,000.00 for the first day but made an award of \$180,000.00 for each subsequent day. The date of that award was April 2020. These figures when updated using the December 2021 CPI of 117.0 amount to \$282,000.00 for day one and \$203,000.00 for each of the eight days that follow. This amounts to \$1,906,000.00.

Special Damages

[105] In light of my finding that he was not maliciously prosecuted the Claimant is not entitled to an award for Attorney-at-Law's cost. However, he would still be entitled to some award for loss of earnings because I have found that he was falsely imprisoned for nine days out of the sixteen days for which he was in custody.

[106] The question as to whether I accept that he is a farmer and that he sustained the losses he complained of is a question of fact. He has maintained from the inception of his Claim that he was a farmer as well as a cable technician. Although he relied on an identification card which post-dated the time of this incident, he gave an explanation that there was no identification available from the Rural Agricultural Development Association (RADA) in 2010 and I am prepared to accept his evidence on this point. He gave evidence of having a farm in Coopers Hill, evidence which was supported by his witness, Mr. Cornwall and so I find on a balance of probabilities that at the time of this incident he was a farmer and that he was in fact growing the crops he referred to in his evidence.

[107] I recognise that he has not brought any documentary proof in support of his losses but it was only after he was acquitted of this matter almost two years later that this action was filed and so there is no indication that at the time of suffering the loss he would have appreciated the significance of, for example an assessor. Authorities have shown that a Claimant involved in an informal occupation such as this would not be expected to supply to the court the same kind of proof as one would expect with a Claimant who is employed in a formal setting.

[108] I am therefore prepared to accept the evidence of the Claimant with respect to the losses he indicated that he suffered. However, the fact that I have found that he should only be awarded a sum for nine days of False Imprisonment then this should be reflected in the award. I am only prepared to make an award for the time of the False imprisonment being nine days. I have therefore prorated the figure of \$480,000.00 which was claimed. This would have been the sum for the sixteen days (16) he was in

custody for. This would represent the sum of \$30,000 per day however since I have found that he should be compensated for only nine (9) days, I have awarded him the sum of \$30,000 per day which amounts to a figure of \$270,000.00 for the period.

[109] No submissions were advanced in respect of the claim for Exemplary Damages however, the Claimant still persisted in the claim for Aggravated Damages. An award of Aggravated Damages is made where there exists some aggravating features about the case such that the Claimant would not receive sufficient compensation if he was only given a basic award.⁶ Lord Woolf MR in the case **Thompson v Commissioner of Police of the Metropolis** (supra) at page 516 made the following observation:

“... Such damages can be awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution.”

[110] I did not find this case to have any particular aggravating features that would result in him not receiving sufficient compensation if he were only given a basic award. The Claimant mentioned that due to this incident he was unable to secure a United States visa to attend his mother’s wedding in the United States of America. I found the nature of this evidence to be too speculative to rely on. I do not think this is an appropriate case for an award of Aggravated Damages.

⁶ See *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498

[111] My orders are as follows:

1. Judgment for the Second Defendant in respect of the claim for Malicious Prosecution;
2. Judgment for the Claimant in respect of the claim for False Imprisonment;
3. General Damages assessed in the sum of \$1,906,000.00 with interest at a rate of 3% per annum from May 29, 2017 to February 2, 2022;
4. Special Damages assessed in the sum of \$270,000.00 with interest at a rate of 3% per annum from December 3, 2012 to February 2, 2022;
5. No award is made for Exemplary Damages or Aggravated Damages;
6. The Claimant is awarded 50% of his costs to be taxed if not agreed.

.....
S. Jackson Haisley
Puisne Judge