



IN THE SUPREME COURT OF JUDICATUE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2006 HCV 566

BETWEEN	EGAN ALLEN	CLAIMANT
AND	JAMAICA PUBLIC SERVICE COMPANY LTD	1ST DEFENDANT
AND	CHRISTOPHER COKE	2ND DEFENDANT

Mr. Lawton C. Heywood for Claimant
Mr. David Batts instructed by Livingston Alexander & Levy for the Defendants.

Heard: February 14 & 15, 2008 & April 10, 2008

**False Imprisonment, Malicious Prosecution – Whether Claimant was
Arrested at the Instigation of the Second Defendants**

Thompson-James J, (Ag.)

On the 17th December 2004 the second Defendant Christopher Coke and Anthony Curtis Technical Assistants in the Loss Reduction Department of the 1st Defendant, Jamaica Public Service Company Ltd (herein after referred to as the JPSCo) along with the police attended on the Claimant Egan Allen's premises at 15 Columbus Road, Kingston. They were carrying out an investigation into the supply and consumption of electricity at premises located along Columbus Road. The premises were inspected by the 2nd Defendant and it was discovered that there was an electricity supply to the premises. He informed the police that the connection was illegal. Mr. Allen was charged with abstracting electricity, taken

to the Denham Town Police Station, where he remained for five (5) hours. He was released on bail in the sum of thirty thousand (\$30,000) dollars and on the 25th January 2005 at the Half Way Tree Criminal Court the Clerk of the Court offered no evidence against him. He was discharged; thus ending the proceedings in the Claimant's favour.

On the 10th February 2006 Mr. Allen filed a Writ of Summons claiming damages for assault and Battery, False Imprisonment and Malicious Prosecution.

The claim in relation to the Assault and Battery was not pursued.

Egan Allen claims that the 2nd Defendant the servant and or agent of the 1st Defendant wrongfully, maliciously and without reasonable and probable cause informed the police that he had committed the offence of abstracting electricity at the premises mentioned earlier. As a consequence of which he was arrested and charged.

Mr. Christopher Coke denies that he acted through any wrongful motive and that he honestly held the view that disconnection orders had been issued and executed in relation to the premises which were in arrears for a large amount of unpaid bills.

The issues to be determined are

1. What transpired at the premises and
2. Whether Mr. Christopher Coke provided reasonable grounds to the police to arrest Egan Allen for the offence of abstracting electricity.

Mr. Egan Allen's Account:

Mr. Allen testified that at the time of the incident he was a business man operating a small grocery business at the premises where he resided for upwards of 23 years. In 1981 through Beverly Bernard who lived with him at that time electricity was supplied to the premises. The supply was continuous. On the 17th December 2004 at about 2.15p.m. police and civilian came to his premises. He knew one of the policemen as Mr. Hewitt and later learnt that the civilian was Christopher Coke. There was an exchange between Mr. Allen and Mr. Hewitt which seemed to be devoid of cordiality during which Mr. Hewitt offered to lock him up.

Subsequent to this Mr. Coke went to where the light meter was. When he removed the meter the light went out when he replaced it the light returned.

Mr. Coke then examined the household appliances in Mr. Allen's premises, Mr. Allen accompanied him and on their return to the verandah Mr. Coke said to the police "the meter is a dummy meter, lock him up". He was taken in a police vehicle to the Denham Town Police Station where he remained for five hours. He was released on bail. He went to court on three occasions and on the 25th January 2005 the Clerk of Court informed the Court that Mr. Allen had a valid contract with JPS and consequently offered no evidence against him. He was discharged.

On cross-examination Mr. Allen maintained his position that it was Mr. Coke who instructed the police to lock him up. The electrical supply he said was never

disconnected however he agreed that he owed outstanding sums of money to the JPSCo.

The Defendant's Account:

Mr. Christopher Coke testified that he has been employed to the JPSCo. since February 1997 as a Technical Assistant involved in the investigation of irregularities with customer's accounts. These irregularities included meter bypass connections or unmetered connections of electricity to customer's premises.

On the 17th December 2004 he was a member of a team of technical assistants and police officers who went to Mr. Allen's premises. He informed Mr. Allen of his intention to inspect the premises and proceeded to do. On examination of the meter he found no irregularities. Contact, he said, was made with the JPSCo. Office and he received information as to an outstanding sum as well as to a disconnection order issued by the JPSCo office and executed on the 23rd September 2003. According to Mr. Coke based on this report the police decided to lock up Mr. Allen. He proceeded to disconnect the electricity supply to the premises and later learnt that Mr. Allen was arrested.

On cross examination Mr. Coke sought to say that he went to court on two occasions however when pressed he admitted that he had in fact attended on three occasions in respect of the case against Mr. Allen.

He agreed that he did not detect any unmetered supply of electricity to the premises neither was the meter tampered with. He said he went to court but he was uncertain as to what charge he was expected to give evidence in relation to

if it was abstracting electricity. He contradicted himself as to whether it is usual to see physical evidence of tampering with the meter.

He denied telling the police to lock up Mr. Allen.

Anthony Curtis' evidence in the main supports that of his co-worker Mr. Coke as it relates to entering the premises and the inspections carried out. He testified that he was the one who received the report concerning the disconnection order and its execution issued by the JPSCo. He was the one who made the report to the police. However he did not know to whom he spoke at the JPSCo office. He denied suggesting, inciting or encouraging the police to arrest Mr. Allen.

When cross examined he stated he inspected the premises and found no irregularities neither did he find evidence of reconnection at the premises.

Finding of Facts

Mr. Egan Allen's account was convincing. I accept his account when he said that it was Mr. Christopher Coke who informed the police that the meter was a "dummy meter and they should lock him up for tieing light".

I appreciate that he had earlier testified that Mr. Hewitt had offered to lock him up but it was after Mr. Coke the technician, who I find had the necessary knowledge, had inspected the premises and informed the police to lock him up, that Mr. Allen was locked up.

I reject Mr. Coke's account of what transpired at the premises that day and find that he was not a truthful witness.

He would have the court believe that he was not sure what offence Mr. Allen was charged with although he was attending court to give evidence in relation to that offence. He is a technical assistant of 10 years experience.

Mr. Coke's co-worker Anthony Curtis in examination in chief testified that he reported what he had been told to the police who based on that report decided to arrest Mr. Allen. However in cross examination he testified that he is sure that he did not make any report to the police regarding what the office had informed him. He thereafter made a valiant attempt to redeem himself but I find this inconsistency fatal to his credibility.

This is Christopher coke's evidence in relation to his findings when he inspected the premises:

"I would say person abstracts electricity when he makes
(1) a bypass connection or
(2) tampers with the meter or
(3) when he uses electricity that is not metered
(4) if he makes an illegal connection to a JPS power line like
throwing up some wire.
I did not detect any of these things at Mr. Allen's premises but
these weren't the only cases of abstracting....."

He supplied no other case. Anthony Curtis opined that although he did not see any irregularities, reconnection is hard to identify as it can be duplicated. I find therefore that none of the irregularities to ground a charge of abstracting electricity existed therefore Mr. Coke had no reasonable ground to demand the arrest of Mr. Allen. On the totality of the evidence, on a balance of probabilities I prefer the evidence of the Claimant to that the Defendant.

I shall now apply the law to the finding of facts.

False Imprisonment

Clerk & Lindsell on Torts 14th Edition at page 592 defines *False Imprisonment as complete deprivation of liberty for any time, however that without lawful cause.*

Mr. Egan Allen was detained at Denham Town Police Station for a period of five hours. Mr. Coke demanded that he be locked up even though he detected no irregularities at the premise based on his own evidence. Although the police made the arrest I find that Mr. Coke directed and authorized the arrest therefore it is his act and not an act of the police.

Mr. Coke having duly directed the arrest of Mr. Allen, I find that he is liable for the tort of False Imprisonment.

In **Hick & Faulkner (1881)- 2LR 8 QBD at page 167** – concerning reasonable and probable cause H J, stated at page 171-2:

“an honest belief in the guilt of an accused based upon a full conviction, founded upon reasonable grounds of the existence of a state of circumstances, which, assuming then to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuse 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 ground 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 accuser must be such to amount to reasonable ground for belief in the guilt of the accused.

Mr. Coke I find did not objectively assess whether there was a proper case against Mr. Allen.

Outstanding sums of money were owed to the JPSCo but arresting Mr. Allen was certainly not the procedure to follow to recover this money.

Malicious Prosecution

The tort of malicious prosecution is committed when the Defendant maliciously and without reasonable and probable cause initiates against the Claimant a criminal prosecution which terminates in the Claimant's favour, and which results in damage to the Claimant's reputation, person or property.

Clerk & Lindsell on Tort 14th Edition Supra: at page 741 outlines that in an action for malicious prosecution the Claimant must first show that he was prosecuted by the defendant that is to say that the law was set in motion against him on a criminal charge.

Secondly that the prosecution was determined in his favour and thirdly that it was without reasonable and probable cause. Fourthly that it was malicious. The onus of proving each of these is on the Claimant.

The term criminal charge includes all indictments involving either scandal to reputation or the possible loss of liberty to the person.

In order to succeed in an action for malicious prosecution Mr. Allen must prove on a balance of probabilities that:

1. There must have been a prosecution of him by the Defendants.
2. There must have been want of reasonable and probable cause for the prosecution.
3. The Defendants must have acted malicious (i.e. with an improper motive and not to further the ends of justice)

4. The prosecution must have terminated in favour of the plaintiff.
5. The plaintiff must have suffered damages as a result of the prosecution.

Based on my finding of facts the Claimant has satisfied all five.

The law was set in motion by Mr. Coke ordering the police to arrest Mr. Allen for abstracting electricity. It is not in issue that the prosecution was determined in Mr. Allen's favour. Mr. Coke had no reasonable grounds to demand this arrest so clearly his intention was not to further the ends of justice.

His motive was improper as he had detected no irregularities at the premises yet he instigated an arrest.

Mr. Allen was charged with abstracting electricity – this is an offence in relation to dishonesty. Exhibit "EA2" is a newspaper extract naming Egan Allen as being among "ten charged with abstracting electricity." His reputation must be tarnished based on this report.

What is the position of the JPSCo?

Mr. Christopher Coke is a technical assistant employed to the JPS and at the time of the incident he was so employed. It was in the course of his employment performing the duties that he was authorized to do, that he went to Columbus Road and it was as a consequence of his action that Mr. Allen was falsely imprisoned and maliciously prosecuted. It is admitted that Mr. Coke is the servant and or agent of the JPSCo. hence it is vicariously liable for Mr. Coke's actions. The Claimant is entitled to judgment against the 1st Defendant JPSCo and its servant and or agent the 2nd Defendant Mr. Christopher Coke.

General Damages

Damages for false imprisonment:

Amongst the case cited by Learned Counsel Mr. Lawton Heyhood in support of his submission concerning the quantum of damages to be awarded were:

(1) Supreme Court C.L. B1199/1997 Arthur Baugh and Courts Jamaica Ltd and the Attorney General of Jamaica.

(2) Supreme Court C.L.1998/N120 Keith Nelson and Sgt. Gayle and the Attorney General of Jamaica.

In both cases Justice Sykes and Justice Brooks respectively outlined the principles involved in the assessment of damages for false imprisonment.

In the case of Arthur Baugh and Courts Jamaica Ltd (supra) the Claimant spent 7 days in custody and was awarded the sum of \$200,000.00.

In the case of Keith Nelson and Sgt. Gayle (Supra) the Claimant spent three days in custody. He was detained on the 16th July 1997 and released on the 18th July 1997. He was awarded \$200,000.00.

In Morris Mullings vs. Murrell, Hall and Pinnock 1993 30JLR at page 279 the Claimant was detained for eighteen days. He was awarded \$54,000. Updated this would amount to \$306,588.78.

In Keith Bent, Faithlyn Bent, Sophia Bent and the Attorney General consolidated claims Suit No. 1998/B30 for a detention of four hours the Claimant was awarded \$60,000.00.

In Mullings vs. Murrell (Supra) Justice Orr states that in an action for false imprisonment damages are primarily assessed on the basis of non-pecuniary loss – loss of dignity and the likes; and under this rubric the main heads are

(a) Injury to liberty i.e. loss of time considered mainly in a non-pecuniary sense.

(b) Injury to feelings – the indignity, mental suffering humiliation and disgrace and embarrassment, also to be taken into account is any injury to reputation.

Mr. Allen was incarcerated for five hours. I take this into account as well as his embarrassment and award him the sum of \$75,000 for false imprisonment. On a review of the relevant authorities I find that there is not a precise method of calculating awards for damages for false imprisonment.

Malicious Prosecution

Mr. Allen is a businessman; he operates a grocery store from his home. In the tort of malicious prosecution the Claimant must prove damage to his reputation. I find that Mr. Allen has done so. He was arrested for an offence of dishonesty this does not augur well for a small grocery shop keeper.

In Arthur Baugh and Courts Jamaica (Supra) Mr. Baugh seemed to be a man of similar status to Mr. Allen. He was awarded the sum of \$350,000.00. In the instant case I will award the same sum of \$350,000.00 for malicious prosecution.

Special Damages

None was proven.

Conclusion

I find that the detention, arrest and prosecution of the Claimant were directly ordered by the 2nd Defendant Mr. Christopher Coke when he told the police “to lock him up for tiefing light.” Mr. Coke authorized the arrest of the Claimant when he had no reasonable grounds to do so.

He is the servant and or agent of the 1st Defendant JPSCo. Hence I find that both Defendants are liable for False Imprisonment and Malicious Prosecution.

It is therefore ordered that judgment be entered for the Claimant in the following amounts:

False Imprisonment - \$75,000.00

Malicious Prosecution - \$350,000.00

Total - \$425,000.00 with interest at 3% from the date of service i.e. February 14, 2006 to the April 10, 2008.

Costs to the Claimant to be agreed or taxed.