



[2025] JMSC Civ.155

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013 HCV 03701

BETWEEN	RYAN BISASOR	CLAIMANT
A N D	ATTORNEY GENERAL OF JAMAICA	DEFENDANT

IN OPEN COURT

Ms. Nashae Lannaman, instructed by Zavia Mayne & Co. for the Claimant

Mr. Stephen McCreath instructed by the Director of State Proceedings for the Defendant

HEARD: December 1 and 18, 2025

Tort – Malicious Prosecution – Whether or not Officer had Reasonable and/or Probable Cause to Charge the Claimant – Whether or not Officer Took the Time to get the True Facts Before Charging the Claimant.

Tort – False Imprisonment – Whether or not the Police Were Guilty of Unreasonable Delay in Considering Bail for the Claimant after Arrest.

Civil Practice and Procedure – Pleadings – Rule 8.9 of the CPR – Failure to Set out Factual Allegations and the Consequences.

Criminal Law – Larceny Contrary to s. 5 of the Larceny Act – Conspiracy to Commit Larceny – Elements of Offence – Whether or not Officer had Sufficient Material Before him to Charge the Claimant with the Offences.

D. STAPLE J

BACKGROUND

- [1]** The Claimant was a truck driver employed by Nutramix Newport Mills Limited between November 2006 and January 2011. It is the Claimant's case that on the 12th January 2011, he was arrested while attempting to leave a question and answer session being conducted by one Mr Ferris Harriot, the Plant Superintendent for Nutramix.
- [2]** This meeting took place in Mr. Harriot's office, on company grounds, with a police officer and a security guard present. The Claimant was questioned about stolen animal feed and accused of being involved. He denied the allegations. The questioning lasted for approximately 30 minutes until he attempted to leave. In the process of doing so, the police officer put his hands behind his back and arrested him. It is his evidence that he was not read his rights nor was he informed why he was being arrested.
- [3]** He was taken to Denham Town police station lock-up and placed in a cell for two to three days before being questioned by Detective Inspector Coleman, with his attorney being present. After the interview, he was charged.
- [4]** Based on the indictment, he, along with two others, were charged with 1 count of conspiracy and three counts of Larceny Contrary to section 5 of the Larceny Act (Simple Larceny). On the 19th January 2011, he was granted bail, and on 23rd November 2012, he was acquitted.

DEFENDANT'S CASE

- [5]** It is the Defendant's case that on three (3) occasions between the dates of December 6, 2010, and December 22, 2010, a large quantity of bulk and finisher feed valued at over \$1,000,000.00 went missing. During their internal investigation, Nutramix found fraudulent delivery documents signed by employees within Nutramix, including the Claimant (fraudulent invoices, delivery tickets, load slips, security log books, and security seal books).

- [6] Several delivery tickets in excess of 10,000 kg per trip of feed were signed by the Claimant but not signed by the recipient. Some delivery tickets were marked cancelled; however, the security log book revealed that in excess of 10,000 kg of bulk feed (per trip) was transported from Nutramix via truck that was at all material times being driven by the Claimant. There were no invoices to show that the feed was billed. In addition, the GPS on the truck showed no evidence of the delivery being made.
- [7] It is the evidence of Mr. Hedley Coleman, who was the Detective Inspector of Police in charge of this matter, that on receiving complaints on 12th January 2011, he identified and cautioned the Claimant and told him why he was being arrested and placed into custody (suspicion of Larceny).
- [8] Inspector Coleman said he immediately commenced an investigation into the reports received by interviewing and recording statements from the complainants (Ferris Harriot, Carl Pottinger, and other employees of Nutramix).
- [9] Inspector Coleman then charged the Claimant on the 17th January 2011 after a question and answer interview with his attorney present and he placed the Claimant before the Court on 19th January 2011, where bail was offered.

The Basis for the Instant Claim

- [10] Aggrieved, the Claimant has now sued the Crown for Malicious Prosecution and False Imprisonment. At first, the Claimant had sued Nutramix Newport Mills Limited, as a co-defendant, but then discontinued this claim.
- [11] The Defendant has denied the claim in both malicious prosecution and false imprisonment. They assert that Inspector Coleman had more than reasonable and/or probable cause to charge the Claimant. They also assert that at the time of charging the Claimant, Inspector Coleman had an honest belief, founded upon reasonable grounds, that there was a proper case to put before the Court against the Claimant.

[12] It is now for the Court to determine whether or not, on the balance of probabilities, the Claimant has satisfied me that he has established both torts.

[13] The Court is grateful for the detailed submissions from both counsel involved in this matter. I considered your submissions carefully.

[14] I am also very grateful for the assistance of my judicial counsel, Ms. Collins, whose research and opinion were quite helpful in preparation of this judgment.

MALICIOUS PROSECUTION

[15] The law on Malicious Prosecution is not new and the principles are fairly well settled.

[16] I can do no better than quote Lord Keith of Kinkel in *Martin v Watson*¹ on the enunciation of the law in this area:

It is common ground that the ingredients of the tort of malicious prosecution are correctly stated in *Clerk & Lindsell on Torts*, 16th ed. (1989), p. 1042, para. 19-05:

"In action of malicious prosecution the plaintiff must show *first* 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; *thirdly*, that it was without reasonable and probable cause; *fourthly*, that it was malicious. The onus of proving every one of these is on the plaintiff."

[17] There is no dispute that the prosecution was determined in favour of the Claimant. He was acquitted by the then Resident Magistrate's Court Holden at Half-Way-Tree following a trial.

[18] There is also no issue raised as to whether or not the prosecution was instituted by the Defendant's servant and/or agent, Inspector Coleman on behalf of the Crown. The question therefore is whether or not the Inspector Coleman acted

¹ [1996] AC 74 at p. 80

without reasonable and/or probable cause in instituting the criminal prosecution against the Claimant.

- [19] So what is meant by “reasonable and/or probable cause”? In the case of *Herniman v Smith*², the following definition was approved by the House of Lords (which definition was taken from the case of *Hicks v Faulkner*³),

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,

- [20] The position was further clarified in the case of *Kevin Stuart v AG of Trinidad and Tobago*⁴ where the Board of the Privy Council for Trinidad and Tobago clarified the correct test for the state of mind of the prosecutor.

- [21] The board said at paragraph 26 of their judgment:

It has commonly been stated that the honest belief must be as to the accused’s guilt in respect of the offence charged: see *Hicks v Faulkner* (1878) 8 QBD 167, 171 per Hawkins J which was approved by the House of Lords in *Herniman v Smith* [1938] AC 305. But in the Board’s view, the principled and correct approach was articulated by Lord Denning in the House of Lords in *Glinks v McIver* [1962] AC 726. He said at pp 758-759:

“[The word “guilty” is apt to be misleading. It suggests that in order to have reasonable and probable cause, a man who bring a prosecution, be he a police officer or a private individual, must, at his peril, believe in the guilt of the accused. That he must be sure of it, as a jury must, before they convict. Whereas in truth, he has only to be satisfied that there is a proper case to lay before the court. After all, he cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set up. Guilt or innocence is for the tribunal and not for him...So also with a police

² [1938] AC 305

³ (1878) 8 QBD 167 at 171

⁴ [2022] UKPC 53. This position was cited with approval by our Court of Appeal in the case of *AG of Jamaica et al v Shawn Robinson* [2023] JMCA App 21 at para 31.

officer. He is concerned to bring to trial every man who should be put on trial, but he is not concerned to convict him...No, the truth is that a police officer is only concerned to see that there is a case proper to be laid before the court.”

[22] I would therefore amend the criteria I had set out in **David Foster v AG**⁵ to reflect what is the true test. So what are we looking for to say that a person has reasonable and/or probable cause? We are looking for:

- (i) An honest belief that there is a proper case to be put before the Court;
- (ii) This belief is based on a full conviction found on reasonable grounds
- (iii) The grounds are a state of circumstances which, if true, would lead an ordinarily prudent and cautious man to believe that the accused should properly be put before the Court.
- (iv) The belief is that of the ordinarily prudent and cautious man.

[23] So the crux of a case of malicious prosecution generally turns on whether or not the prosecutor had enough evidence before him to meet these criteria before he decided to set the law in motion against the Claimant.

[24] This was confirmed by the Privy Council decision of **Roopnarine v AG of Trinidad and Tobago**⁶. At paragraph 22 of the judgment, Lord Hamblen, citing a passage from the treatise Clerk & Lindsell on Torts, said as follows:

In order to establish that the relevant person did not have an honest belief based on reasonable grounds that there was a proper case to lay before the court it will generally be necessary for the claimant to identify the nature of the information upon which the decision to do so was made. As explained in Clerk & Lindsell at para 15-35:

“The question of reasonable and probable cause may create difficulties in the conduct of a trial: first, it involves the proof of a negative, and secondly, in dealing with it the judge has to take on himself a duty of an exceptional nature. The claimant has, in the first place, to give some evidence tending to establish an absence of reasonable and probable cause which is operating on the mind of the defendant. To do this,

⁵ [2023] JMSC Civ 83 at paras 15-16

⁶ [2023] UKPC 30

the claimant must identify the circumstances in which the prosecution was instituted. It is not enough to prove that the real facts established no criminal liability against him, unless it also appears that those facts were within the personal knowledge of the defendant. If they were not, the claimant must show the nature of the information on which the defendant acted, which is sometimes done by putting in the depositions which were before the magistrate.” [emphasis mine]

THE PLEADINGS

- [25] Having examined the Claim Form and Particulars of Claim closely, I have come to the unfortunate, but unavoidable, conclusion that the Claimant’s claim for malicious prosecution was not properly pleaded. The Claimant has failed to assert, as required, that the Defendant’s servant and/or agent acted maliciously and/or without reasonable and/or probable cause when charging him for the offences as required by s. 33 of the **Constabulary Force Act**.
- [26] It is mandatory that those words be pleaded in relation to any action in tort against a member of the Jamaica Constabulary Force. Failure so to do can result in a person being non-suited or having judgment entered against them⁷.
- [27] I have examined **both** (emphasis mine) the Claim Form as well as the Particulars of Claim to see if the situation could have been salvaged based on the ruling in the *Bowers* decision. Unfortunately, in my view, both documents are devoid of the allegation in so far as the claim for malicious prosecution is concerned.
- [28] Concerning the claim for malicious prosecution, the Claimant simply says, in both documents, “On or about the 12th day of January 2011, the Defendants unlawfully and/or maliciously and/or without reasonable and/or probable cause falsely imprisoned, or caused to be falsely imprisoned, the Claimant, by incarcerating the

⁷ See the decision of in *Bowers et al v Gordon* Unreported, Court of Appeal of Jamaica, SCCA 46/90, July 8, 1991 at page 2.

Claimant at the Denham Town Lock Up from the 12th day of January 2011 to the 19th day of January 2011. *The Defendants thereafter caused the false charges of Simple Larceny and Conspiracy to commit Simple Larceny, to be preferred against the Claimant in the Resident Magistrates Court for the Corporate Area...*” At no point do they say that the Defendant’s servant and/or agent acted maliciously and/or without reasonable and/or probable cause in laying the charges. The allegation of the absence of reasonable and/or probable cause and malice was attributable solely to the false imprisonment claim.

[29] In this regard, the Claim for Malicious Prosecution was a non-starter *ab initio*. The pleadings were never amended, though they could have been *had the amendment been sought within the limitation period*. The same Court of Appeal, in a long established line of authority, said that there is no statutory or common law power to amend a statement of case to add a cause of action after a limitation period has passed in Jamaica⁸.

[30] Therefore, the Claimant’s claim for malicious prosecution is not properly pleaded and before the Court and judgment is entered for the Defendant accordingly.

[31] However, if I am wrong on this and it is found that I ought to have exercised some common law power to amend after the limitation period has passed (for the power so to do does not reside in any Jamaican statute), I will go on to consider the substance of the issue.

The Honest Belief that there is a Proper Case to Put Before the Court.

[32] I am satisfied that Inspector Coleman had an honest belief that the Claimant should have been put before the Court for the offences with which he charged the

⁸ See the decision in *Bowers* (supra), *AG et al v Richards* Unreported, Court of Appeal of Jamaica, SCCA 39/86, and *Charlton v Reid* (1960) 3 WIR 33 per McGregor CJ.

Claimant. He said so in his evidence in chief⁹ and I had no reason to doubt his belief.

[33] A proper case, in my view, having read the authorities, simply is that there is sufficient evidence of the necessary elements of the offence with which the prosecutor intends to charge the accused. For if the prosecutor does have evidence to support all the essential elements of the offence, then there is no case to put before the Court. It is his belief that counts.

[34] They are not to be concerned with the guilt or innocence of the individual, just whether or not they have sufficient material to put the matter before the Court.

Belief Based on a Full Conviction Founded Upon Reasonable Grounds

[35] What I am called upon to do is to scrutinize the facts that presented themselves to Inspector Coleman at the time he formed this honest belief, to determine whether or not his belief was reasonably held, though honest.

[36] For a belief that is founded upon grounds that are not reasonable, cannot be a belief that is rational. I am to judge the Inspector from the standard of the ordinarily prudent officer.

[37] The grounds are the true facts of the case in so far as the prosecutor can reasonably ascertain them. In other words, an ordinarily prudent prosecutor is to take reasonable steps to get all of the facts before them before deciding whether or not to prosecute.

[38] In the case of ***Abrath v North Eastern Railway Company***¹⁰, the House of Lords upheld a decision of the Court of Appeal approving the direction of the trial judge to the jury on the question of the facts giving rise to the honest belief of the

⁹ See paragraph 11 of the Witness Statement of Mr. Coleman

¹⁰ (1886) 11 QBD 247

prosecutor. The case involved an action against a railway company for malicious prosecution. At the trial, the judge directed the jury that it was for the plaintiff to establish a want of reasonable and probable cause, and malice, and that it lay on him to show that the defendants had not taken reasonable care to inform themselves of the true facts of the case. The judge asked the jury whether they were satisfied that the defendants did take reasonable care to inform themselves of the true facts, and that they honestly believed in the case which they laid before the magistrates. The jury answered both questions in the affirmative, and the judge entered judgment for the defendants.

- [39] They cannot therefore ignore salient facts relevant to their decision or fail to make reasonable enquiries to fill obvious gaps or pursue reasonable leads. Their conduct must be reasonable.

The Elements of Larceny

- [40] Larceny is an offence under the **Larceny Act**. The Claimant was charged with Larceny contrary to s. 5 of the **Larceny Act**. That section is set out below:

Stealing for which no special punishment is provided under this or any other enactment for the time being in force shall be simple larceny and a felony punishable with imprisonment with hard labour for any term not exceeding five years.

- [41] So what then is “stealing”? Stealing is defined in the Act under s. 3(1). It states as follows:

a person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof:

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts it to his own use or to the use of any person other than the owner;

- [42] Who is an “Owner”? The owner is also defined under s. 3(2)(iii). It states as follows:

“owner” includes any **part** owner, or *person having possession or control of* [emphasis mine], or a special property in, anything capable of being stolen

Did Inspector Coleman Have Reasonable Grounds for His Honest Belief?

[43] Inspector Coleman would therefore have needed to have evidence before him that the Claimant, without the consent of the owner, fraudulently and without a claim of right in those goods, took and carried away those goods with the intent to deprive the owners of the goods permanently. He also would have to have evidence that the Claimant had an agreement with himself and at least one other person to do these acts to support the conspiracy charge. Importantly, it is the Claimant that must satisfy me, on the balance of probabilities, that the Inspector had no such evidential material. It is the Claimant that must put the absence of this evidence and the circumstances of the arrest before the Court.

[44] As Lord Denning said in *Glinks v McIver*¹¹:

*“First, there are many cases where the facts and information known to the prosecutor are not in doubt. The plaintiff has himself to put them before the court because the burden is on him to show there was no reasonable and probable cause. The mere fact of acquittal gets him nowhere. **He will therefore refer to the depositions which were taken before the magistrate: or he may refer, as here, to the statements taken by the police from the witnesses: and he will argue from thence that there was no reasonable or probable cause.**”* [Emphasis mine].

[45] In this case, the Claimant put no such evidence before the Court. In fact, it was the Defendant that tendered the statements from the witnesses and the investigating officer into evidence.

[46] It is important to note, at this point, that the bulk of the evidence against the Claimant came, not from Inspector Coleman’s own investigation, but from an internal investigation conducted by employees of Nutramix.

¹¹ [1962] AC 726 at p 760

[47] This is my finding. According to the evidence in chief of Inspector Coleman (from paragraphs 3-7 of his witness statement), he received a report from Mr. Harriot about an investigation conducted by Nutramix arising out of reports of several unaccounted for bulk feed products.

[48] A person known as Mr. Pottinger reported that on the conclusion of the investigation, employees of Nutramix, to include the Claimant, were interviewed. It was Mr. Harriot that reported the findings of the investigation to him. The report revealed details of findings from the employees which included examination by them of security log books, security seal books, invoices (allegedly fraudulent), delivery tickets etc. which were signed by employees including the Claimant.

[49] Following the reports from Mr. Harriot and Mr. Pottinger, Inspector Coleman commenced his investigation into the report of larceny. According to him, the investigation **involved** (emphasis mine), interviewing and recorded [sic] statements from Mr. Harriot and Carl Pottinger and several other persons from Nutramix. That was it. There was no evidence from him as to what documents he received as part of his investigation or whether he actually examined the documents before charging the Claimant. The following exchange took place during cross-examination:

17 [Exhibit 1 shown to witness]. [Before it was done I asked counsel why she wanted to put it to him]. Did you do any investigation as to the source of Mr. Pottinger's information about the theft that he mentioned?
I did.

18 But there is evidence of that source in evidence?
I don't agree.

19 Wouldn't you agree that Mr. Harriot's knowledge is also based on hearsay?
I don't agree as I did investigation into the matter.

20 [Question repeated]
I am not sure if it would have been hearsay.

21 In your own statement, you indicated that the Claimant was interviewed by Mr. Clive Morris and then transported to the station by Clive Morris?
Yes.

22 You were not present during that interview?
No.

23 You were not part of the internal investigations at Nutramix?
No Miss.

24 Any investigation done by Nutramix was hearsay cause you were not there?
I would not agree with that.

25 You did not have first hand knowledge of those investigations?
No. But I would have gotten documentation.

26 Those documents aren't in evidence today?
No. I don't see them. But they are on the file.

[50] There was nothing in Inspector Coleman's police statement (exhibit 4) which indicated that he collected any of the documents referred to in the reports from the Nutramix employees and reviewed them himself to satisfy himself of their contents and that they implicated the Claimant.

[51] In the above exchange, all he said was that he got documentation. But there is no evidence of the nature of this documentation of which Inspector Coleman spoke. There is also nothing in the police statements of Mr. Harriot or Mr. Pottinger that the documents, tracking information and other things to which they referred in their statements, were handed over to Inspector Coleman or even requested by him.

[52] In my view, and I so find, the entire case against the Claimant was built on the documents and GPS tracking information. There is no evidence that Inspector Coleman examined these things for himself before charging the Claimant. I find that he did not, himself, check these things.

- [53] The question now becomes, was it fatal to his charging of the Claimant that he did not? In ascertaining the “true facts”, the prosecutor (in this case Inspector Coleman) is required to do what is reasonable. He must take reasonable care to inform himself of the true facts of the case.
- [54] What Inspector Coleman had before him at the time of charging the Claimant were detailed statements from both Pottinger and Harriot as to the internal processes and systems in place at Nutramix relating to the purchase and delivery of bulk feed. Having read the statements myself, I can say they do provide damning information against the Claimant assuming the facts to be true.
- [55] In my view, Inspector Coleman had taken a sufficiently detailed statement from both Mr. Pottinger and Mr. Harriot to implicate the Claimant.
- [56] Counsel for the Claimant placed reliance on the decision of ***Derrick Yorke v The AG***¹² and a passage from same wherein the learned trial judge relied on the authority of ***Hobbins v AG et al***¹³. In the *Hobbins* case, Beswick J (as she then was) found that the investigating officer ignored a mountain of evidence pointing away from the guilt of the Claimant and pressed ahead in his prosecution of the Claimant. The case against the Claimant collapsed without a trial and Mr. Hobbins successfully sued for malicious prosecution.
- [57] Counsel for the Claimant relied on this case to show that an officer must demonstrate that he took steps to ascertain whether the Claimant committed the offences with which he was charged. It is not sufficient for him to simply rely on what was reported to him.
- [58] But in my view, that case is distinguishable on its facts. In the *Hobbins* case, the officer made no attempt to get the Claimant’s side of the case properly; and he

¹² [2025] JMSC Civ 119

¹³ Unreported, Supreme Court of Jamaica, CL 1998/H196, January 29, 2007.

ignored the fact that the complainant had said that the money for the car was paid to a third party and that that person had given a receipt for same.

[59] In this case, there was a detailed statement taken from the witnesses from Nutramix and there was also a question and answer interview conducted with the Claimant in the presence of his lawyer before the charges were laid.

[60] The material revealed a basis for saying that the Claimant took goods from Nutramix destined for a particular location and client but were not delivered there on more than one occasion. There was material in the statement that the Claimant signed documents connecting him to the items taken on the various days and the driving away from Nutramix with the items. There was also no proof, based on their system for purchase and delivery of feed, that the intended customer received the goods or that there was even such an intended customer.

[61] I see no difficulty in finding then that Inspector Coleman took reasonable steps to ascertain the true facts of the case to ensure that there was a proper case to put the Claimant before the court for the offence of larceny.

[62] The Claimant has failed to prove that there was no documentary evidence before the Court to support the case from the Crown at the trial before the learned Resident Magistrate. They did not seek to get the notes of evidence at the trial (which was a reasonable course of action) to show the Court that nothing was before the Court to implicate the Claimant¹⁴. The fact of him not being called upon to answer does not mean that Inspector Coleman had no material before the Court.

[63] Similarly, as to conspiracy to commit larceny, I find that there was material before Inspector Coleman at the time of charge that would have warranted a charge of conspiracy. Even though none of the other persons interviewed implicated the

¹⁴ See *Roopnarine* (supra at n. 6) at paras 34-40 and 44 as to the nature of the evidence that the Claimant needs to have to prove a claim for malicious prosecution. Indeed, the Appellant's claim for malicious prosecution was determined at a no case submission – a rarity in civil litigation.

Claimant in a conspiracy or named him as an accomplice, based on the system of ordering, purchase and delivery as detailed in the statements taken by Inspector Coleman, the Claimant would more than likely have needed help and cooperation to be able to leave Nutramix with the feed. This, in my view, lends itself to a proper case to be put before the Court.

Was Inspector Coleman Activated by Malice?

[64] The Claimant has failed to put any evidence before the Court, whether by direct evidence or inference, that Inspector Coleman had any motive to prosecute him other than an interest in seeing justice done.

Conclusion on Malicious Prosecution

[65] In my view, the Claimant has not established, on the balance of probabilities, that Inspector Coleman did not have reasonable and/or probable cause and therefore acted maliciously in prosecuting him for the offences of larceny or of conspiracy to commit larceny.

FALSE IMPRISONMENT

[66] It is my finding that the officers had more than reasonable and/or probable cause to arrest the Claimant in all the circumstances.

[67] It was pleaded that he was arrested on the 12th January 2011. But it is my finding that he was arrested on the 11th January 2011. In any event, I find that the arrest was justified as there was sufficient material revealed during the questioning to cause the officer to have a reasonable suspicion and therefore probable cause that a felony had been committed...that felony being larceny and conspiracy to commit larceny.

[68] But the Particulars of Claim simply says as follows, "On or about the 12th day of January 2011, the Defendants unlawfully and/or maliciously and/or without

reasonable and/or probable cause, falsely imprisoned or caused to be falsely imprisoned, the Claimant, by incarcerating him at the Denham Town Lock Up from the 12 day of January 2011 to the 19th day of January 2011.”

- [69] There is no factual averment from the pleadings (or even the evidence) that bail was not considered for him during this period of time.
- [70] Under the Pre-Charter Constitution (the Charter of Fundamental Rights and Freedoms did not come into force until April of 2011 whereas this incident took place in January of 2011), the Claimant still had the right to be taken before a court *without delay*.
- [71] The decision of ***Flemming v Det Cpl Myers et al***¹⁵ is authority for the above position.
- [72] As Sykes J (as he then was) said in ***Baugh v Courts (Jamaica) Ltd et al***¹⁶, in determining whether or not the circumstances amount to false imprisonment, the Court must take the following steps:

29. These passages demonstrate how, as a practical matter the courts are to deal with this issue. The practical method of proof is:

- (a) the claimant states the time he was arrested and the time he was either release[d] or taken before a court;
- (b) the court then makes a prima facie assessment of whether the delay is unreasonable;
- (c) if the delay in[sic] unreasonable and therefore prima facie the tort of false imprisonment has been committed the court then takes into account any explanation.

¹⁵ (1989) 26 JLR at p 526

¹⁶ Unreported, Supreme Court of Jamaica, CL B 099/1997, October 6, 2006 at para 29

- [73] I find the period of delay of 7 days to have been unreasonable in all the circumstances.
- [74] There is no evidence from Inspector Coleman as to why he took 5 days to hold the question and answer interview with the Claimant. In his statement in the criminal matter there is no such information either. In my view, a reasonable time within which to have had a Q&A would have been within 48 hours at the latest.
- [75] In the circumstances I regard the period of unlawful imprisonment as starting from the 14th January 2011 and it ended on January 18, 2011 the day before he was taken to the Court and offered bail. That makes it 5 days.
- [76] The Claimant's claims for exemplary and aggravated damages were struck out as they were not properly pleaded. Nor did the Claimant make any allegation in the pleadings to say that he suffered strenuous conditions in custody. As such, those paragraphs were struck out from his witness statement.

DAMAGES

- [77] For the five days of False Imprisonment, I am minded to award the Claimant the sum of \$700,000.00.
- [78] I examined the authorities of *Delroy Thompson v AG of Jamaica et al*¹⁷ and *Dodd v AG et al*¹⁸. In those cases, the Claimants were detained for 6 and 7 days respectively. In *Thompson*, the Claimant was awarded the sum of \$650,000.00 which updates to \$997,510.82 after indexation (\$166,251.80/day). In *Dodd*, the Claimant was awarded the sum of \$525,000.00 which updates to \$847,892.94 after indexation (\$121,127.56/day).

¹⁷ [2016] JMSC Civ 78

¹⁸ [2017] JMSC Civ 91

- [79] I also examined the authority of *John Green v D&G et al*¹⁹. In that case, the Court found that the Claimant was falsely imprisoned for a period of 5 days and awarded the sum of \$900,000.00 on the 9th May 2025. There were aggravating features to the arrest in that case which are absent from this case.
- [80] I am minded therefore to discount the award and make an award of \$700,000.00.
- [81] The sums claimed as special damages, in my view, relate to the claim for malicious prosecution. Since I found for the Defendant in that aspect of the Claim, I am not minded to make any award under these headings.

CONCLUSION

- [82] The Claimant has failed to properly plead his case of Malicious Prosecution against the Defendant. They failed to plead that the Defendants acted maliciously and/or without reasonable and/or probable cause in instituting the charges.
- [83] In any event, I am not satisfied on the balance of probabilities that the Claimant has established his case of malicious prosecution. Whilst it is true Inspector Coleman did institute proceedings against the Claimant and those proceedings were terminated in his favour, the Claimant has not proven that Inspector Coleman had no reasonable and/or probable cause to charge him and that he was activated by malice.
- [84] I am satisfied, however, that the Claimant had been falsely imprisoned for 5 days on the evidence before the Court.
- [85] I am not minded to award the Claimant his full costs in this matter as he failed to prove his claim for Malicious Prosecution. Instead, I will award him 50% of his costs.

¹⁹ [2025] JMSC Civ 59

DISPOSITION

- 1 Judgment for the Claimant on the Claim for False Imprisonment
- 2 Judgment for the Defendant on the Claim for Malicious Prosecution.
- 3 Damages for False Imprisonment in the sum of \$700,000.00 with interest thereon at 3% from the 21st June 2013 to the 18th December 2025.
- 4 The Claimant is to recover 50% of his costs such costs summarily assessed at \$70,000.00 based on the Parish Court Tariff.

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Dale Staple
Puisne Judge