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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C-104/1983

BETWEEN	PAULETTE CAMPBELL	PLAINTIFF
A N D	THE ATTORNEY GENERAL	DEFENDANT

Miss P. Nicholson instructed by Erskine, Green and Company for Plaintiff.

Mr. Irving for Defendant.

HEARD: JULY 15, 1991 AND
JANUARY 15, 1992

REID, J.

Plaintiff Paulette Campbell, at the hearing of this action an unemployed person resident at Fraser Content in St. Catherine, issued a writ against the Attorney General under the Crown Proceedings Act for damages for False Imprisonment and Malicious Prosecution following abortive charges against her in the Gun Court. In the wee hours of 20th April, 1982 (Tuesday) a police party had paid a surprise visit to the house where she lived with one Eric Meikle and their infant child. This was shortly after 3:00 a.m. when Eric had arisen and gone outside. Five minutes after his going out, plaintiff heard an explosion outside and peeping out, saw a man dressed in white. She then opened the door of a room next to hers and saw the occupant, one Devon Noble, also a man who held a gun pointed towards the room. The latter a member of the police party, inquired of her who the occupants were. Replying, she explained that Eric had gone outside. From a table the visitor, a constable, took a one-pound paper bag containing ganja. Plaintiff and Devon were escorted to a police motor vehicle in which she saw Eric's motionless body in blood. Taken to various police stations, to Spanish Town lastly, she subsequently appeared before the Resident Magistrate at Spanish Town, pleaded "guilty" to a charge of possession of ganja and the fine of One Hundred and Fifty Dollars ($150.00) was paid the next day. Arraigned in the Gun Court a week later, she was the next day admitted to bail. When next she attended at the Gun Court, the Firearm charges against Noble and herself were dropped. Touching the incident of 20th April, 1982 she denied the suggestion that gunshots had emanated from inside the house. She insisted that there had been only one explosion and that it had sounded outside

the house.

For the defence, Detective Corporal Worrell Clacken described how the police party which he had led had surrounded the house in an effort, presumably to apprehend one "Touchy" suspected of being there. By the light of a kerosene lamp inside the house, Clacken could see movements to and fro therein. He shouted, "Police outside, open the door". The response was gun-fire flash and sound, lasting for one minute; thereafter the sound of footsteps retreating into the bush at the rear of the house. Together with Constable Wright he entered the house, saw plaintiff and Devon Noble to whom identifying introductions were addressed also inquiry as to those who had fled. Plaintiff did not reply but Devon Noble revealed that it was "Touchy". Although Plaintiff under cross-examination had admitted that "Touchy" had made visits to the house previously, it is surprising that Noble's revelation, in her presence allegedly, was never put to her in the witness box. Only a single gun-shot had been discharged by the police, says Clacken - that fired by Constable Wright. He was unable to say if Meikle had been killed by that shot.

Crucial to the determination of the issues was the opportunity afforded for observing the demeanour of witnesses. It was plaintiff's version which emerged by far the more acceptable account. Unequivocally, I find that there had only been one gun shot and it came from the police and in circumstances that suggest that Meikle who never re-entered the house, had been killed by gun-fire. From the house was no gun-fire and certainly no volley of four or five ranging over a one minute duration. The sudden demise of the Gun Court charges against plaintiff is not surprising. This is a separate matter from the charge of possession of ganja for which her arrest remains justified. Although no mention is made of the quantum of ganja found, one must bear in mind that this incident was quite some time before the enactment of legislation which now prescribes a tariff of fines per ounce avoirdupois. Nevertheless, factors such as the receptacle and the amount of the fine imposed, lead to an inference that the amount of cannabis was a matter of ounces (if at all plural).

Plaintiff testified that she appeared in Court on the ganja charge on 7th May, 1982. That date is named in the statement of claim as the Gun Court date and this was not traversed in the defence filed. Where she testifies that she had faced the Gun Court a week later after facing the St. Catherine magistrate

remains unchallenged testimony. Inferentially therefore is a finding that some ten or eleven days had elapsed before she appeared in Court at all.

The submission for the defence in reliance on Diamond v. minter & Ors. 1941 1 K.B. 656 was that the period of remand following plaintiff's first appearance in Court constituted the action of a judicial officer which could not ground an action for false imprisonment. Reference was also made to the unreported judgment of the Court of Appeal No. 63 of 1985 - Flemming v. Myers & Attorney General dated December 18, 1989. Useful would have been the citation from the judgment by Carey P. (Ag.) where he said:

> "The action of false imprisonment arises where a person is detained against his will without legal 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 in circumstances where he honestly and on reasonable grounds believed a crime has been committed. Seeing that the arrest is a step in the judicial process, there is a duty on the part of the police officer to see that the person is brought before the Court in a reasonable time." (Underlinings mine)

He further re-iterated the view of Lord Porter in the case of John Lewis & Co. Ltd. v. Times [1952] A.C. 676 that an action for false imprisonment lay if a person was detained for an unreasonable time. Continuing Carey P. (Ag.) said:

> "In my respectful view an action for false imprisonment may lie when a person 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.
>
> ...Where however he is kept longer than he should, it is the protracted detention which constitutes the wrong, the "injuria" ... I see nothing either in principle or in authority to prevent an action for false imprisonment." (Underlinings mine)

Referring to the trial of that case in the Court below he also said:

> "[The learned trial Judge] did not consider whether an unreasonable delay in putting the appellant before the Court could amount to false imprisonment because it showed the absence of reasonable and probable cause or malice".

The Court of Appeal was unanimous in holding that the period of thirteen days' delay before the appellant was placed before a Court was unreasonable and thereby entitled him to succeed on that part of his claim. Is the principle of false imprisonment immanent in the nature of inordinate delay demonstrated in the Flemming case distinguishable from the situation in the present case? More

particularly, should the arrest of the plaintiff for possession of ganja in itself a justified act, altogether preclude any success of her claim for false imprisonment, and if so to what extent?

The validity of her arrest for cannabis apart, no justification has been advanced or demonstrated for the inordinate delay preceding her first appearance in Court. In the ordinary course of events, that presumptively small amount of cannabis would in all probability not have prevented her release on recognisance with a surety to appear before the Resident Magistrate. Assuming otherwise, she would have faced the Court within two or three days at latest.

By contrast, a person charged with a breach of the Firearms Act in circumstances, as the law then stood, presumptively suggesting collaboration with others engaged in shooting at the police would, on appearance before a Resident Magistrate, most assuredly have been remitted without bail to the High Court Division of the Gun Court. If these events flow naturally from the fact of the preferment of such charges, then the interposition of a judicial officer's act ought not to afford protection from the consequences of a suit for false imprisonment in the absence of reasonable and probable cause.

The Firearm charges against the plaintiff, it appears, only arose from the circumstances of the death of her common-law husband, yielding, so far, no explanation. It follows inexorably that the plaintiff has succeeded in establishing the absence of reasonable and probable cause, and withal has proved malice. The inevitable conclusion is that the protracted incarceration constituting inordinate delay in the first instance, for which there is no explanation and thereafter continuing mediately by a judicial remand, was altogether the direct consequence of the unfounded charges. The measure of damages must necessarily be calculated by reference to the entire period of incarceration but mitigated to the extent that the arrest for cannabis was justified.

Measure of Damages

No useful purpose is served in this case by assigning under separate heads the award of general damages. Save and except to the extent that mitigation is warranted as I have indicated, the "injuria" occasioned by the undeserving prosecution and imprisonment is aggravated when viewed in the setting of the sudden and unexplained death of plaintiff's common law husband, reflected in her

feelings which she herself describes: "I feel as if I was getting mad".

The claim for legal representation becomes:

Special Damages: Two Thousand dollars ($2,000.00) with interest at 3% from 20th April, 1982 until judgment.

General Damages: Seventy Thousand Dollars ($70,000.00) with interest at 3% from 6th April, 1982 until judgment.

The Plaintiff will have costs which will be taxed or agreed upon.