



[2016] JMSC Civ. # 195

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2008HCV06161

BETWEEN	SANDRA DAVIS	CLAIMANT
AND	CPL. JAMES	1 ST DEFENDANT
AND	W/SUPT. LEWIS	2 ND DEFENDANT
AND	ATTORNEY GENERAL	3 RD DEFENDANT

Mrs. Marion Rose-Green for the Claimant.

Ms. S Hunter instructed by Director of States Proceedings for the 3rd defendant.

HEARD: 4TH November, 2016

Assessment of Damages; false imprisonment; assault and battery; claimant detained and searched at airport nothing found; thereafter detained at KPH handcuffed to a bed whilst further investigations conducted; no illegal substance found; discharged after 4 days.

CORAM: GEORGE, J.

Background

[1] On the 21/11/2007, the claimant was accosted by the 1st and 2nd defendants at the Norman Manley airport. They, being members of the Narcotics Division of the Jamaica Constable Force approached her and advised her that they desired to do a routine check. They interrogated and tested her for illegal substances. She was detained and taken into custody, albeit that none was found.

[2] She was later taken to Kingston Public Hospital where she was handcuffed to a bed for 4 days. She was given X-ray, laxatives and blood tests.

No incriminating evidence was again, not found and she was released on or about 25/11/2007 without being charged.

- [3] Following a claim filed by the Claimant, the Defendants filed a defence as to liability. Upon the matter coming on for trial on the 13/10/2014, Judgment on admission was entered in favour of the Claimant with damages to be assessed and costs to be agreed and taxed. It is in view of the foregoing that the matter is before me for assessment of damages. The claimant seeks damages for (i) false imprisonment (ii) Assault and Battery/Personal injuries (iv) Aggravated Damages; and (v) Exemplary Damages.

False Imprisonment

- [4] The Claimant was kept in custody without charge from 21st November to 25th November 2007. She was not taken before the court during this time.

- (a) The Claimant relies on *Herwin Fearon v Attorney General* – CLF 1990-06-delivered 31/3/05 – 3 1/2 days imprisonment – equivalent to sum of \$751,699.88.
- (b) *Earl Hobbins v Attorney General and Cons. Watson* 1998/H196 – 20/1/2007 - \$400,000.00 for false imprisonment for 28 hours – updated to \$906,930.69.
- (c) *Sharon Greenwood- Henry v Attorney General- CLC* 1999, - October 2005- Claimant awarded \$100,000 15 hours- updated to \$242,841.99.

In this case the claimant was falsely imprisoned for approximately 4days and so she seeks \$1,300.000. It is the Defendant's submission that the cases relied on by the claimant under this head of damages, are not applicable.

- [5] As it relates to cases (a), and (b) above, the defence contends that as the claimants were held at a lock up during their period of detention this renders these cases different from the one at bar. Although this is in fact true, the

difference in my view is that being held at a hospital, in a public place, against one's will is far more egregious than being held in the lock-ups. In fact the court has to take into account any injury to feelings and among other things, injury to reputation. As it relates to the case at (c), the circumstances were on one view of the facts, more egregious, as pointed out by the Defendant. In that case, the Claimant was subjected to vaginal examination by a police officer, she was further subjected to vaginal and anal examination at the hospital; intimidated to take laxatives, and was subjected to further examination upon the insistence of a police officer, even after x-ray result showed no evidence of drugs.

[6] The Defendant contends that a more applicable case is that of Greg Martin v Det. Sgt. Halliman and the Attorney General – 2007 HC 01096. In the case of Greg Martin a urine sample was taken from the claimant at the Norman Manley International Airport and tested. The doctor observed that there was something in the claimant's stomach which was not moving. X-ray results revealed an object in the stomach. He was discharged from hospital on 12/11/2002- and further held at the police station until 18/11/2002.

[7] The 3rd defendant further contends that the claimant should not have been kept beyond 72 hours – and that this first 72 hours should not form part of the calculation, as this period is “medically necessary” – for ensuring a patient is in good health and also to benefit the police officers in investigating the matter. The defendant submits that as in the case of Greg Martin- the court should award a similar daily rate of \$136,363 64 – and that the claimant is entitled to \$180,000 for damages for false imprisonment and \$720,000 should the court calculate this period as being 4 days.

[8] The case of Greg Martin is in any event distinguishable from the one at bar; whereas with Greg Martin, there was evidence of preliminary finding of test results. Mr, Greg Martin was given several doses of laxatives and did not have any bowel movements so it could be argued that there was an automatic

additional period of stay due to this. However in the case at bar, the claimants results were always available. She had frequent bowel movements and there was no need to hesitate or wait to see the results. It was evident from very early that no narcotics were found in her faeces. Neither was any found in her urine or blood tests. There was therefore no need to keep her for at least 3 days as may be suggested from the evidence of the doctor in the Greg Martin case.

- [9] I bear in mind the following aggravating features (i) the claimant is a female and menstruating at the time (ii) she was handcuffed to a bed for 4 days (iii) she was placed under police guard (iv) monitored even whilst using the toilet and bathing (iv) prevented from calling friends and relatives and not allowed visitors.
- I am guided by the case of Sharon Greenwood cited by the Claimant and note the distinctions and for the foregoing reasons, I award a sum of \$1 Million dollars for 4 days of false imprisonment.

Assault and Battery

Pain and Suffering and loss of Amenities.

[10] The claimants witness statement discloses the following:

- (i) Claimant was taken to the police post at airport;
- (ii) Bag was searched at airport police post;
- (iii) Had to urinate in a bottle even though told officer she was menstruating
- (iv) Suitcase was taken from airline and searched.
- (vi) Had to pull down clothes including panty.
- (vii) When she opened her legs police officers peeped up under her.

The claimant was understandably embarrassed and felt humiliated. She said she felt like she “wanted to die”. They then told her she could pull up her clothes. After pulling up her clothes she was sent from the room and was replaced by her friend. This ordeal began at about 1:30 p.m. It was sometime after at about 4 p.m that she was advised by the police that she would be taken to Kingston Public Hospital as the x-ray machine had broken down and that they were going to do

an x-ray. She left for the hospital pulling her suitcase along with her friend doing the same; with two police officers in front and two behind. People were staring and mocking.

[11] She said she felt “so degraded and ashamed, knowing that” she was innocent. Again the embarrassment likely to be felt in this situation is beyond question and the court has no difficulty in accepting this. The shame and feeling of being degraded could only have intensified as a police officer at the exit instructed them to stand and wait. This allowed persons outside to see them and these persons were laughing. The officer returned with a motor vehicle and folded and placed a piece of plastic sheeting over the back seat and instructed the claimant and her friend to go in the motor vehicle and sit on it. One officer sat on right and one on left. Again the claimant was very humiliated.

At Kingston Public Hospital

[12] The Claimant had to walk in front of officers. The officer took them to a front desk. He spoke to a doctor who in turn asked her if she took drugs she said “no” but nevertheless the doctor ordered an x-ray which was written up by a nurse, and which the police took along with the claimant to the front and she was registered there. She felt humiliated as she was being treated like a criminal. She was then taken to a nurse for an assessment. She said she was asked to sign a piece of paper, which she did as she felt humiliated. She signed this under pressure. She was taken to an x-ray room had to take off her clothes. This x-ray was done. Then she was examined by a doctor. The doctor told the officer that he saw some stool, so “keep them for 24 hours”. She was taken to ward 2 by hospital personnel and police and had to sit there on a bench between 8 p.m. – 2 a.m. She was unable to move as she was told not to move. She was not offered any food, or water – By this time she was extremely tired, weary, embarrassed and exhausted; even at this time she was not allowed a phone call.

- [13] At about 10p.m. the doctor questioned her; inserted needles in her hand and took blood test samples- the IV needle was left in her hand. No drip was given. This was left in her hand from Wednesday when taken to the hospital until Saturday when discharged. This left a scar on her hand until now. The Claimant gave no permission for blood samples or drip. Her apparent silence amounted to no more than feeling pressured and that she had a lack of choice. She was prevented from contacting her lawyer or her home to check on her children. The police took her phone to prevent her from doing this; one from her and the other from her bag.
- [14] When she went to use the toilet, a female police followed with gloves on her hand and a pan; she took her to bathroom and told her to urinate in the pan. The officer left the cubicle door open, stood at the door and watched. Other patients witnessed this. A male police stood outside- She was menstruating and this therefore aggravated the level of embarrassment. The officer instructed her to shake the pan and thereafter looked in it before telling her throw it into the toilet bowl. The Claimant understandably felt ashamed.
- [15] A second doctor then questioned her. She was then taken to a bed and handcuffed to the bed. This was at about 2 a.m. She was Questioned by doctors and police throughout the night and couldn't sleep. She felt like she was being tortured. Paragraph 31 of the claimants witness statement captures in a capsule her ordeal whilst detained- she said this "I was constantly questioned by the police and I was very upset tired and weary as I was kept against my will, denied legal representation, all sorts of examinations were done on me. I was denied contact with my family, repeatedly questioned and I was handcuffed to the bed, sleep deprived and was hungry and thirsty". To go to the bathroom an officer pulled her handcuffs and took her to the bathroom; she was watched by the police whilst bathing and urinating. She was understandably angry and humiliated- especially as other persons were coming in and out and as the door was open, they saw her naked. She was freed to drink liquid and to pass stool.

She had diarrhoea as a result of the liquid she was given and had to go to the bathroom very often. She defecated on herself and again felt humiliated. Other persons were on the ward at the time and privy to a lot of this which added to her embarrassment and humiliation.

[16] Visitors and other patients, some of whom she knew, came and saw her handcuffed to the bed. A police officer eventually called home for her on the Friday and spoke to her mother. Her mother came to visit and was not allowed to see her. She was also unable to see her sister in-law and two other persons who came with her from her community. Persons were not allowed to speak to her but were able to see her handcuffed to the bed. She was not permitted to eat as they said they had to flush out her system. This made her feel unbalanced. Her blood pressure rose to 180/140 and she was subsequently given pain killers. The claimant did 3 x-rays during her stay at the hospital.

On Reaching Home

[17] On reaching home, she was weak and her head was pounding with pain. She was very sick and could not speak to her children or anyone. Her stomach was hurting and she had difficulty sleeping; she had bad stomach pains. The claimant's relationship with her boyfriend was affected; she had no interest in sexual intercourse and her relationship ended. She would constantly break down and cry before her family, including her children and became impatient with them. Her noise tolerance level became low; she had constant flashbacks of being in handcuffs and of using the bathroom in the presence of police officers during her menstrual cycle and had to seek medical attention due to her stomach pains and inability to sleep. She visited Dr. Babulal who examined her and gave her a prescription for medication for her stomach, blood pressure, nerves and sleep.

[18] Dr. Babulal's medical report of 10/1/07 reveals the following:

- (i) the claimant was seen by him on 24/11/07;
- (ii) she had a previous history of hypertension

- (iii) she presented with abdominal pain and blood pressure at an elevated level of 146/100
- (iv) she was diagnosed with mild post traumatic stress disorder;
- (v) she was started on xanax and advised it appears, from the doctor stating that “she was asked to continue her anti hypertensive” that she was asked to continue taking her medication for hypertension.

[19] She went to Panama shortly after the incident on 28/11/2007 to buy goods as she had intended on the 21/11/07, when she was detained, by the police. But she said she could not function well and felt nervous. She had anxiety attacks from the very moment she entered the airport. She lost \$300 US whilst there as well as her passport and felt out of control.

[20] Since the incident she has had sleepless nights –even up to the time of doing her witness statement. She said her blood pressure was high but that this did not happen before. In light of the medical report from Dr. Babalal, the relevant portions of which I have outlined above, I do not accept that the claimant’s blood pressure problems only arose since this incident. I accept that the claimant no longer travels and is terrified of flying due to her experience from this incident. I also accept that she has had feelings of anxiety and nervousness and that she sometimes cries a lot. As the Claimant believed that the incident was significantly affecting her relationship with other people, she went to see Dr. Wendel Abel. Dr. Wendel Abel’s report indicates that the Claimant was diagnosed with post traumatic stress disorder and severe major depression. He first saw her on 30/1/2008.

[21] The Claimant relies on the following cases:

- (i) Sharon Greenwood- Henry v. Attorney General of Jamaica Claim No. CLG of 1999 – reported at Recent Personal Injuries Awards (Khan Volume 6, page 208) and

- (ii) Celina Pinnocks v. The Attorney General of Jamaica CL 1993P.188 reported at Recent Personal Injuries Awards (Khan Volume 5, page 289).

In the case at bar, Dr. Wendel Abel's report recounts, Ms Davis's experience of derision and humiliation, being handcuffed to a bed like a "common criminal; flashbacks of the incident; avoidance techniques to hinder reminders; sleepless nights – racing of heart and shortness of breath as she pointed out to Dr. Abel, "It is difficult to accept that I was treated like a common criminal, handcuffed to a hospital bed for four days" (Para 1 page 4 of the Report).

[22] The Claimant's complaint to the psychiatrist is that the symptoms from the incident were so incapacitating that it affected her ability to function in a number of ways. It affected her long standing relationship of 13 years with her child's father, affecting intimacy. She became less able to perform her role as mother and care – giver; being easily irritable and overly sensitive to noise, and easily frightened. The claimant became reclusive as a result of the trauma and embarrassment and in fear of the questions that she meets on encounter with persons in the community.

[23] Following her visit to Dr. Abel on the 14/12/2007 and the above noted and medication prescribed, the claimant had a review session on the 30/11/2008. At this time she appeared calmer and reported that most of the post traumatic symptoms had subsided. However, she became very tearful in the session, which the Doctor considers to be indicative of the fact that she was not fully recovered and still had unresolved emotional pain.

[24] As part of the Doctor's opinion and recommendations he stated that "overall it is clear that her current symptoms have proven incapacitating for her and has impacted negatively on her ability to function, evidenced by her difficulties in her relationship, her social isolation and her difficulty maintaining employment"

(Paragraph 4, page 6 of his report). The chronicle laid out both in the witness statement of the claimant and the report of Dr. Abel clearly reflects an experience which can only be described as extremely humiliating and a gross violation of person.

This being accepted, the difficult question for the court is how much to award this claimant as compensation for the way she was treated by agents of the state. Both Counsels cited several authorities on pain suffering and loss of amenities. They vary in detail and amount. The circumstances and nature of the injuries in each case cited in these matters are never the same. I am nevertheless guided by them in making an award in relation to the subject Claimant as they provide some fodder for assessing similarities and distinguishable features, thereby assisting with this difficult task of making an appropriate award for general damages.

[25] The Sharon Greenwood –Henry case, is the 1st starting point for consideration of appropriate damages as in that case, the claimant was unlawfully detained in circumstances similar to the Claimant in the case at bar. However there are some significant differences. In the Greenwood case, “her vagina was invaded by the prying fingers of a police officer” (Sykes J at paragraph 7) this was in a bathroom at the police station and done without any lawful authority and in circumstances which were hygienically unsound and therefore potentially hazardous. She was subsequently taken to the police station by a siren blazing ambulance, which added to the indignation. Her anus and vagina were subsequently examined by a doctor upon the insistence of a police officer, who refused to accept the negative results of an x-ray report. In the case at Bar, the Claimant was subjected to humiliating and degrading treatment over a longer period – that is 4 days. However, there was no invasion of the vagina or anus. These are the main differences between two cases.

[26] In Greenwood, the sum awarded in October 2005, for this head of damages was \$1,100,000.00.00, which is now approximately \$2,800,000.00. In the other case

relied on by the claimant, Celma Pinnock v Attorney General, she too was subjected to humiliating treatment and detained in similar circumstances. She was diagnosed with severe depression, anxiety, loss of libido and severe phobic responses, related to travel and sexual activity. She was awarded Two Million five Hundred dollars in 1998 which was now approximately \$12 million dollars. The claimant in the case at Bar seeks damages of \$7 million dollars under this head.

[27] In case of Sharon Greenwood-Henry the medical evidence of Dr. Irons revealed that she had suffered insomnia, appetite disturbance, and phobic avoidance behaviour specific to the incident, depression and anxiety and bowel and bladder disturbance.

[28] In this case, Ms Davis suffered the following:

- (i) continued to experience spinning sensation;
- (ii) stomach pains and inability to sleep
- (iii) depression
- (iv) lack of libido resulting in a breakdown of her relationship with her partner
- (v) constant crying
- (vi) inability to tolerate noise and
- (vii) flashbacks

[29] Dr. Wedel Abel diagnosed that the claimant had post traumatic stress disorder and major depression. Whilst the claimant was falsely imprisoned she was handcuffed to a bed for 4 days, subjected to force or intimidation to drink laxative. Blood samples were taken from her without her consent; a drip holder was inserted in her arm and remained there for several days, causing pain. This was without her freely consenting. These acts were carried out in circumstances where there was no lawful excuse or justification and without doubt amounts to acts of interference with the person, sufficient to establish a case of assault and

battery. Therefore although as the defendant has submitted, the Greenwood case is distinguishable from the present in that a significant feature in this case is that there was no insertion into the vagina or the anus, but Ms. Davies suffered the agony of being handcuffed to a bed for 4 days. This is also true of the case of Celma Pinnock.

[30] The 3rd Defendant relies on two authorities to support its contention that the claimant should be awarded \$1,230,000.00 under this head. The first authority relied on is that of Greg Martin v Det/Sgt. Halliman and the Attorney General – 2007 HCV 01096. In the Greg case, on 3/11/2002, Mr. Greg Martin was detained at the International Airport on suspicion that he was transporting cocaine. He was later detained at the Kingston Public Hospital from the 4/11/02 to 1/11/2002. He was handcuffed to a hospital bed and given a daily dose of laxative amounting to 7 in total and subjected to a rectal examination and a urine sample was taken from him. He was detained in the hospital from the 4/11/02 to 12/11/02. Upon his release from hospital he was nevertheless detained at the police lock-ups until 18/11'02. Mr. Martin was awarded \$1,000,000 under this head of damages. The defendant, forcefully and with merit submits that the extent of violation and suffering is by far greater in Martin Greg's case that in light of these differences the award to the claimant should be 50% less – that is \$500,000; which when updated at the time of her submissions amounted to approximately \$1,230,000.00 However, this in my view is too much of a reduction, considering the circumstances and level of similarity with the claimant's case. In addition, the award in Mr. Martin's case was extremely conservative, considering the circumstances and his experiences.

The case of Sharon Greenwood is more similar to the case before the court, not only as it relates to her experiences at the time but also in relation to the injuries suffered. I do accept however, that on the one hand the experience and trauma suffered by Greenwood can be considered greater than in this case. However, unlike Greenwood, the claimant in this case had to endure the ordeal for a period

of 4 days and experienced the humiliation of defecating on herself in the presence of others; forced to even bathe in presence of police officers and other patients. These factors are sufficiently significant to grant an award similar to Greenwood. Accordingly, I grant an award of three million dollars (\$3,000,000.00).

Aggravated Damages

[31] Aggravated Damages are awarded by a court to reflect the exceptional harm done to claimant in an action for tort. These damages are compensatory in nature, while exemplary damages by contrast, are awarded as punishment for egregious conduct. Aggravated damages are awarded to compensate for intangible emotional injury. They are designed to compensate the Claimant, and they are measured by the Claimant's suffering. Such intangible elements as suffered by the Claimant in this case, such as, pain, embarrassment, grief, humiliation, wounded pride, and damaged self-esteem have been caused by the conduct of the 1st and 2nd Defendant and as such suitable for an award of aggravated damages as these injuries are also of the type that the Defendants should reasonably have foreseen. Any award by the Court under this head is for aggravation of the injuries by the Defendants' highhanded conduct.

The circumstances surrounding Ms. Davies's detention were of a kind that, were liable to induce feelings of humiliation, embarrassment and resentment. In my view, therefore, the claim for aggravated damages is well founded. The claimant claims aggravated damages as compensation for the mental distress she suffered as a result of the behaviour of the 1st and 2nd Defendants. She alleges that the manner in which she was detained and treated has so outraged her, aggravating the injury done to her to an extent deserving of additional monetary compensation.

The conduct of the 1st and 2nd Defendants was clearly egregious. The main details of this conduct are previously outlined above. Of particular significance, is

the interrogation for hours by the police; being handcuffed to a bed for 4 days; not being permitted to eat or drink and to communicate with family members or a lawyer; the public display that she had to undergo and despite her protests being made to look and being treated as a 'criminal'. Her resultant feelings of depression, post traumatic stress disorder are relevant here. The plaintiff also developed a fear of flying which has resulted in her not being able to travel to buy goods for resale as she would have done before. These are all as a result of the conduct of the 1st and 2nd Defendants.

[33] Again the Claimant relies on the case of Sharon Greenwood Henry v Attorney General in which an award of \$700,000 was given under this head. The claimant considers that (\$1,700,000.00), One Million, Seven Hundred Thousand Dollars, as being reasonable compensation for the claimant under this head. The development of fear became palpable when she went to Panama directly after the ordeal. However, although this was some two weeks before she saw Dr. Abel, this was not recorded in his report as a complaint. This is quite odd, as this would be a significant psychological and relevant feature when visiting a psychiatrist. It does undermine the credibility of this assertion.

[34] The 3rd Defendant contends that I should give little weight if any at all, not just to this aspect of the Claimant's evidence, but also to the evidence that she was menstruating at the time of the incident; that she obtained a scar from a needle being left in her arm for 4 days; an officer "peeped under her" whilst she was menstruating; she defecated on herself in the hospital; the officers placed plastic on the vehicle seat for her to sit while being transported from the airport and persons at the airport mocked her and her friend; as these were not included in the report of the psychiatrist. However, the Claimant cannot be expected to give full details of her ordeal to the psychiatrist. She is expected to tell him the general details. Her failure, if there were any, to give such specifics, do not in my mind necessarily undermine her credibility on these issues. These were factual issues which became a matter of evidence used to support her case. This of course

would be different if the omission related directly to relevant psychiatric matters. In any event, it is the Claimant's evidence that she told the psychiatrist about a number of these matters although they are not recorded in his report.

[35] It is also the 3rd Defendant's contention that the alleged egregious nature of the 1st and second Defendants conduct is mitigated or can be offset by the Claimant's evidence that one of the officers contacted her family on her behalf; the officers offered an explanation to her regarding her detention and that she could leave when the doctors so directed; and that an officer contacted a nurse when she complained that she felt nauseous.

[36] These the 3rd Defendant contends indicate that **“the officers were cordial to her and assisted her, the best they could under the circumstances whilst performing their duties“**. In the circumstances of this case, I find these submissions no less than insulting to the Claimant. Perhaps, after all that she has endured, she ought to nevertheless be grateful for small mercies! Accordingly the 3rd Defendant submits that there is no basis for an award of aggravated damages or alternatively if the court is minded to grant such an award, it should be for a nominal figure. The figure submitted for any such award is \$246,000.00, representing one-seventh of the amount awarded to Sharon Greenwood under this head of damages. In view of the reasons stated above, I make an award of \$1,000,000.00 under this head.

Exemplary Damages

The improper interference by public officials with citizens is justified by an award of exemplary damages. The purpose of such an award is to punish and deter and to express outrage at the Defendants' conduct. Exemplary damages are appropriate where conduct is so high – handed, malicious, vindictive and oppressive that it offends the Court's sense of decency. Exemplary damages bear no relation to what the Claimant should receive by way of compensation

and are aimed at punishment of the defendant, rather than compensation of the Claimant.

I am required to award exemplary damages only in those circumstances where the combined award of general and aggravated damages is insufficient to punish the Defendants and in exceptional cases, (as the objective of damages in a claim of tort is usually compensatory rather than punitive), to punish oppressive, arbitrary and unconstitutional acts of government servants such as the 1st and 2nd Defendants in this case. It is the position of the Claimant that such circumstances exist in this case and as such an award for exemplary damages is warranted. In my view the evidence of the behaviour of the police officers in question supports a finding of being oppressive, arbitrary and unconstitutional. There is evidence that the police had physically restrained the Claimant to a bed, without having had any legitimate reason for doing so; had handcuffed her to this bed and detained her in this manner for a period of 4 days. In the circumstances, the conduct of the police is worthy of significant punishment.

[37] I consider this head of damage, whilst bearing in mind and fully endorsing **Lord Devlin's enunciation in Rookes v Bernard [1964] A.C. 1129** that **"where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the others, he might, perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service."**

[38] The treatment of the Claimant by agents of the state was not subordinate to their duty of service. In fact it went far outside those bounds. As stated previously, the main aim of exemplary damages is to punish and not merely to compensate. **See Greg Martin v Sgt. Halliman & Attorney General of Jamaica 2007 HCV 01096.** There has been a clear breach of the Claimant's rights by the conduct of the officers – not only is

the infringement made out, but the compensation under the other heads is insufficient to reflect its egregious nature. The court must mark its disapproval further to take account of the punitive aspect of the damages to be awarded to the Claimant. In so doing, I make an award of \$1,000,000.00 for exemplary damages.

[39] **Special Damages**

3 receipts from Bank Wendel Abel

\$38,000.00

Transportation Costs

\$2,600.00

Loss of Income

The Claimant has claimed \$70,000.00 being \$10,000 weekly for 7 weeks for loss of income. The claimant has thrown a blank figure at the court with little evidence as to how she came to suffer this loss. She has not presented any medical evidence to substantiate her claim that the incident affected her ability to work in the same way that she did before the incident. It is also not clear whether loss on her time as a 'higgler' would have resulted in increased time to do cosmetology. The claimant has a duty to mitigate her loss. Although in some circumstances the court can give an award, although a specific special damage is not proved, it is my view that at the very minimum, there should be evidence before the court establishing how this loss of income about ; for example how many items would have been sold and at what profit etc. In view of the foregoing, I make no award for loss of income.

Judgment

- (i) **Special Damages: \$40,600.00 with interest at 3% from 21st November 2007 to the date of Judgment.**

- (ii) **False Imprisonment: \$1,000,000.00 with interest at 3% from the 5th day of January, 2009, to the date of Judgment.**

- (iii) Aggravated Damages & Exemplary Damages: \$2,000,000.00
with interest at 3% from the 5th day of January, 2009, to the date of
Judgment.**
- (iv) Assault & Battery/ Pain & Suffering: \$3,000,000.00 with interest at 3%
from 5th day of January, 2009 to the date of Judgment.**
- (v) Costs to the Claimant to be agreed or taxed.**