



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT C.L. E/050/1996

BETWEEN INASU EVERALD ELLIS PLAINTIFF
A N D ATTORNEY GENERAL 1ST DEFENDANT
A N D RANSFORD A. FRASER 2ND DEFENDANT
(CONSTABLE)

*Leon Green and Miss K. Anderson of Leon Green
And Company for plaintiff.*

*Curtis Cockrane and Mrs. Joy Crawford instructed by the
Director of State Proceedings for defendants.*

*Heard: August 16, 2000,
January 8, 10, 2001 & March 21, 2001.*

This is a an assessment of damages arising from a claim by the plaintiff for false imprisonment and malicious prosecution. The foundation of the claim is laid in the arrest and charges of the plaintiff with several offences under the Larceny Act, on March 1, 1991 and the subsequent dismissal of the charges against him on October 4, 1995.

At the time of his arrest, the plaintiff was employed to the Government of Jamaica as a Forester 2 (PST/GN2) assigned to the Forestry Department of Agriculture. He was stationed at an office in Port Antonio in the parish of Portland.

He testified that on the morning of March 1, 1991 the 2nd defendant attended his office and informed him that he required a statement from him pertaining to irregularities in his department and invited him to accompany him to the police station. He acceded to the request and on arrival at the police station at about 9:00 a.m. he was detained there until 5:30 p.m. or 6 p.m. when he was admitted to bail.

It was further related by him that at the police station he was exposed to the scrutiny of members to the public. He attended court on 32 occasions and on some of those occasions he was subject to the stare of many persons. It was also disclosed by him that as a consequence of his arrest he has lost his social standing, his reputation has suffered and he has experienced severe emotional injury.

I will first consider the claim for false imprisonment. On the plaintiff's arrival at the police station he was directed to a room in which he remained from 9:a.m. until 2:30 p.m. At 2:30 p.m. he was transferred to

another room in which questions and answers were administered until 5:30 p.m. or 6:00 p.m., at which time he was released on bail.

Although he asserted that his detention lasted from 9:00 a.m. to 5:30 p.m. or 6:00 p.m., this would have been 8 or 9 hours. He averred in his statement of claim that he had been detained for 7 hours. He is bound by his pleading. It must be taken that he was deprived of his liberty for only 7 hours.

The period of his imprisonment would have resulted not only a loss of liberty but also loss of dignity and would have caused mental suffering. He complained of feeling humiliated and embarrassed and disgraced by this. I accept that he did.

He was forced to withstand the callous behaviour displayed by the 2nd defendant in leaving him to stand in a room at the police station for several hours, open to the public's view and ridicule. This coupled with the fact that he had to remain at the police station for 7 hours without food or drink must have augmented his mental pain.

Several cases were cited with a view to assist the court in its computation of an award. In my opinion only the case of *C.L. 1992 \G063 v Gordon v Attorney General* offers useful guidance in the assessment of an award. In that case the plaintiff, a security officer, was falsely imprisoned at

the Half Way Tree Police Station on May 2, 1991 and released on May 3, 1991 without any charges being laid against him. An award of \$60,000.00 for false imprisonment was made.

In the case under review the plaintiff had been detained for 7 hours. Charges were laid against him; they were dismissed. Although his period of imprisonment was shorter than that of the plaintiff in Gordon's case, I am of the view that his imprisonment also merits an award of \$60,000.00.

I will now turn to the claim for malicious prosecution. The plaintiff, consequent on his being arrested and charged, was compelled to attend court on 32 occasions at the Resident Magistrates Courts in Port Antonio and in Buff Bay. As a result, the threat of a conviction loomed heavily over his head. This threat continued until the date of his discharge.

He is a Justice of the Peace. For 10 years prior to his arrest he performed duties as a lay magistrate, these duties he enjoyed. As a lay magistrate he would have acquired an enviable position. The status accorded thereto, is experienced by a privileged few. The act of his being deprived of executing his lay magisterial functions must have deeply wounded his feelings.

Before his arrest he was a well-respected, prominent and popular member of his community. Invitations would be extended to him to attend

all important functions in his parish. These invitations were no longer forthcoming after his arrest.

He revealed that he was accustomed to entertain lavishly. Since the incident he no longer entertains because he has become depressed and withdrawn. He stated that he was shunned by his friends and his social life has been destroyed. One of his witnesses, Mr. Orville Anderson, gave evidence in support of this. His wife Mrs. Linda Ellis also gave evidence that the plaintiff used to entertain but since the incident no longer does so. He hardly leaves the home and only a few friends visit their home.

Dr. Ruth Doobar, Clinical psychologist also gave evidence on behalf of the plaintiff. She stated that she had known the plaintiff since 1973. When she first met him he was gregarious, cheerful and friendly. He attended her office in May 1999, at which time she observed a great change in his demeanor, his emotional and mental status. He was serious and tearful. He related to her what had happened.

He did not want to work, and he had lost his self-esteem. He was suffering from psychoneurosis which was expressed in depression. She opined that he had been psychologically destroyed.

The plaintiff stated that his mental condition had resulted in his suffering erectile dysfunction and he has been unable to continue sexual

relationship with his wife. Mrs. Linda Ellis also testified that since the incident no sexual intercourse has taken place between the plaintiff and herself. She disclosed that prior to that, their sexual relationship had been normal.

It is clear that the plaintiff has lost his self confidence and has displayed low self-esteem. These characteristics are a natural cause of the prosecution. His societal withdrawal, born out a mental anguish, would not only be connected to the prosecution but also to the burden of having to attend court 32 times.

He was subjected to undue mental pain. This would have first become manifest during his detention at the police station when a crowd consisting of approximately 500 persons went to inspect him and made contemptuous remarks about him. His anguish and embarrassment was further compounded when he attended the Court on the first morning when a crowd of at least 750 persons went to view him.

Further mental stress was imposed on him when his friends no longer chose to associate with him. His distress have would also been increased by his recognising that not only his friends and acquaintances had no longer held him in high regard but society as a whole had an unsavoury opinion of him.

It is clear that the plaintiff had not only suffered damage to his reputation but also to his feelings and his health. There is no doubt he had been ostracized. There is also no doubt he that he had suffered indignity, humiliation and embarrassment by the fact that the charges were preferred against him.

I will now address the matter of an award under this head.

Mr. Green cited the case of *SCCA 70/96 Abrahams and The Gleaner Co. and Another* and urged that this case be used as a guide in the computation of an award. In my judgment, no reliance can be placed on this case as a foundation for the measure of damages in the present case.

It is a settled principle that a court is constrained to assess damages for non-pecuniary losses by reference to previous awards in comparable cases. Comparable cases, in this context, must be with reference to cases of similar nature, cases of the same ilk.

The cause of action in Abraham's case is libel. The causes of action in the present case are false imprisonment and malicious prosecution. The tort of defamation exists to protect reputation. In libel cases the injury to reputation is the principal element and damages for injury to reputation recoverable. In action for false imprisonment and malicious presentation damages for injury to reputation, may or may not be recoverable.

In my view the case C.L H221/1985 Henry v Attorney General and Another would offer appropriate guidance in the making of an award. In that case, the plaintiff is an attorney-at-law and was at the material time the Executive Director of the Public Sector Organisation of Jamaica. He was kept in cage at police station for an hour, later arrested charged and was admitted to bail the same day. His arrest was carried on a Radio broadcast and was also published in the Star Newspaper. The charge against him was dismissed. He was awarded \$150,000.00 for the arrest and malicious prosecution

In the present case the plaintiff was at time of his arrest a civil servant and Justice of the Peace. He was detained for 7 hours by police. A broadcast of his arrest was carried on radio. In my view a similar award of \$150,000.00 would be adequate compensation for his having been maliciously prosecuted.

The plaintiff also seeks aggravated damages. Certain acts on the part of the 2nd defendant were disdainful, grossly insulting and offensive to the plaintiff. He ridiculed the plaintiff by referring to him as the "big man" he had heard about.

He did not permit the plaintiff to communicate with his director at the Ministry of Agriculture despite the plaintiff's request so to do.

The plaintiff was left standing in a room for 5 ½ hours. During the period of his detention he was offered no refreshment nor was he granted an opportunity to secure food or drink. The 2nd defendant's action can only be interpreted as his having willfully embarked on a course of conduct to humiliate the plaintiff.

The crown had this charge pending against the plaintiff for almost 5 years. The prosecution was under an obligation to have disposed of this matter within a reasonable time in order to avoid injustice being done to the accused. The period between the date of the plaintiff's arrest and the date of his discharge cannot be regarded as a reasonable time. It was not only unreasonable but also unjust to have held the plaintiff under the threat of a conviction for such a long period.

The arrest of the plaintiff was aired by Jamaican Broadcasting Corporation, a medium which enjoys islandwide coverage. The news item was submitted by a prominent news anchor woman from the town of Port Antonio. Persons who heard it would have formed an unfavourable opinion of the plaintiff.

The behaviour of the arresting constable, the failure of the prosecution to have disposed of the matter within a reasonable time and the

fact that the arrest had been publicized, warrant the plaintiff being awarded aggravated damages.

In Henry v Attorney general and Another (supra). The plaintiff was awarded \$200,000.00 for aggravated damages as a result of the arresting officer acting in an unprofessional manner causing the plaintiff embarrassment, humiliation and insult.

It is my view that in light of the fact that the aggravating circumstances in this case exceeded that encountered by the plaintiff in Henry's case, the sum of \$300,000.00 should be awarded to the plaintiff for aggravated damages.

I will now turn to the special damages. The particulars of special damages were amended to delete certain items which had been claimed. The following items remained: -

(1)	(a)	Cost of legal representation before R. M. Court for Portland.	\$1,323,525.00
	(b)	Costs of legal representation for Disciplinary proceedings.	15,075.00
2.		Transportation costs	
		Travelling to and from Port Antonio R.M. Court	27,000.00
		Travelling to and from Kingston for Disciplinary proceedings 10 weeks.	45,000.00

3. **Medical expenses**

(a)	Consultation with doctors	72,500.00
(b)	Medication 1991-1999 and continuing	270,000.00
4.	Loss of Income - Construction	550,000.00

So far as the claim for legal representation is concerned, an invoice from the plaintiff's attorney-at-law for the sum of \$1,323,525.00 for legal fees was exhibited. It shows that the plaintiff had paid \$1,000,000.00 on account of those fees. The plaintiff, however, stated he had paid his attorney-at-law for his services with respect to the case. He could not recall the sum he paid. He asserted that he had obtained receipts yet none was tendered. This notwithstanding, he is entitled to an award for legal fees. However an amount of \$1,256,250.00 stated in the invoice for fees with respect to professional service rendered with respect to the criminal charge seems exorbitant. In my opinion, these fees have been inflated by being rendered in United States currency and reconverted to Jamaican currency. The plaintiff is not entitled to recovery of damages beyond that which is reasonable. Given the number of attendances at court which the attorney-at-law would have made and having regard to all the circumstances, the sum of

\$500,000 .00 would be a reasonable fee which the plaintiff ought properly to pay and therefore this sum will be awarded for fees.

The claim of \$15,075 for legal fees with respect to the disciplinary proceedings taken against the plaintiff is allowed.

As to his claim for \$237,000.00 for travelling to and from the Resident Magistrates court for Portland, he stated that he had receipts for travelling but none were presented to the court. This item is disallowed. It was indicated that he would forego the claim for \$45,000.00 for travelling to and from Kingston to attend disciplinary proceeding hearings.

His claims for consultation with doctors and medication had not been proved and must be disallowed.

With respect to the claim for \$550,000.00, the plaintiff declared that it would have been the balance of money due to him pursuant to a contract for a construction at a site at Happy Grove School the performance of which he was unable to complete due his arrest.

The plaintiff was a Civil Servant at the time of his arrest. As a public officer he was subject to the orders, rules and regulations which govern public officers. S. 37 of the Staff Orders for the public service of Jamaica prohibits the engagement in work by public officers. That section provides as follows: -

**“3.7 Public officers are forbidden: -
to undertake any private work for payment or
engage in trade or employ themselves in any
commercial or agricultural undertaking without the
consent of the appropriate Service Commission.”**

Evidence was given by Mrs. Jacqueline Mendez, Deputy Chief Personnel Officer, on behalf of the defendants. She testified that public officers engaging in private work for reward must obtain the consent of the Public Service Commission. Her perusal of the plaintiff's file did not reveal that he had been granted permission to operate any form of business. Additionally, no evidence has been adduced by the plaintiff to establish that he had been granted permission by the public Service Commission to undertake private work.. Consequently, this claim cannot be entertained.

A summary of the awards is as follows: -

Special Damages

Legal fees	\$515,075.00
------------	--------------

General Damages

False Imprisonment	\$60,000.00
--------------------	-------------

Malicious Prosecution	150,000.00
-----------------------	------------

Aggravated Damages	300,000.00
--------------------	------------

Judgment for the plaintiff in the sum of \$1,025,0785.00 being general damages of \$510,000.00 with interest thereon at rate of 6% per annum from the date of the service of the Writ of Summons and Special damages \$515,075.00 with interest thereon at the rate of 6% per annum from March 1, 1991.

Costs of these proceedings to be the plaintiff's to be agreed or taxed.