

Filing Cabinet

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 1998/H196

BETWEEN EARL HOBBS CLAIMANT
AND THE ATTORNEY-GENERAL 1ST DEFENDANT
AND CONSTABLE MARK WATSON 2ND DEFENDANT

Mr. Carlton Williams instructed by Williams, McKoy and Palmer for Claimant

Mr. P. Wilson instructed by Director of State Proceedings for 1st Defendant

Heard: July 24 and 25, 2006 and January 29, 2007

Beswick, J

1. In this matter, Mr. Hobbins, a businessman, claims damages for malicious prosecution, false imprisonment, assault and beating which he alleges that he suffered at the hands of Constable Watson, a police officer.

2. Mr. Hobbins' business involved trading in cars. Ms. Aldene Ferreira, whom he described as being his fiancée, wished to purchase a car. Mr. Hobbins accompanied her to a fellow car trader, Mr. Rohan Ellis, and Ms. Ferreira paid Mr. Ellis to import a car for her.

3. Time passed. Ms. Ferreira waited for her vehicle. Her wait was a long one. She grew impatient. Then she became anxious and distrustful about the matter.

4. Mr. Hobbins' evidence is that Ms. Ferreira well knew that the car was awaiting

clearance at the wharf and that she needed to pay additional money before it could be released. Further, she should understand that there was no possibility of her recovering the money she had paid earlier as that had been used to purchase the car.

4. Ms. Ferreira contacted the police and on November 11, 1997, a police officer accompanied her to Mr. Hobbins' premises. There Ms. Ferreira, Mr. Hobbins and the police officer tried to resolve the matter. Mr. Hobbins gave the officer information on how to contact Mr. Ellis, the person who, according to him, had in fact entered into the arrangement. After this discussion, the officer left the premises without further ado.

Mr. Hobbins thought that his part in the matter had been clarified.

5. Mr. Hobbins' belief that the matter of his non-involvement had been resolved was short lived, for soon after, another officer in the person of the defendant, Constable Watson, arrived at Mr. Hobbins' premises. He was with another officer and proceeded to place Mr. Hobbins in the police vehicle and transport him to the police station.

6. The evidence is that it was when Mr. Hobbins arrived at the station, that Ms. Ferreira, who was there at the time, then accused him of having stolen her money. Mr. Hobbins' entreaties to Constable Watson to contact Mr. Rohan Ellis fell on deaf ears. Constable Watson did nothing with all the details which Mr. Hobbins gave him, including the information that it was Mr. Ellis who had received the money and who had issued a receipt for it. Indeed Mr. Hobbins' uncontradicted evidence is that Ms. Ferreira gave Constable Watson the receipt issued to her by Mr. Ellis and which bore Mr. Ellis' signature. There is no evidence of Constable Watson exerting even the slightest effort, even dialling a telephone number, to ascertain whether or not he was prosecuting the correct man.

7. Instead, according to Mr. Hobbins, Constable Watson held him by the waist and pulled him to a cell block where he remained imprisoned for 28 hours before being placed before the Court.

8. Mr. Hobbins claims that the experience caused him distress and that he suffered from a headache so intense that it lasted for two weeks after he had been released on bail. According to him, it became impossible for him to work as he lost his ability to concentrate.

9. Mr. Hobbins attended Court to answer to a charge of fraudulent conversion which had by then been laid against him. Ultimately, some six months later, the Resident Magistrate made “no order” in the case, thereby releasing him from facing a trial.

10. Mr. Hobbins seeks compensation for the suffering he endured during this experience. I propose to deal in turn with Mr. Hobbins’ claims for damages against Constable Watson and the Attorney-General for malicious prosecution, false imprisonment, assault and beating and for the monies paid by him to defend the case in court.

11. The defence pleaded is that Constable Watson acted without malice and with reasonable and probable cause. Constable Watson was investigating what he viewed as a case of fraudulent conversion. He denies assaulting or beating Mr. Hobbins.

12. Constable Watson’s evidence-in-chief was that on May 27, 1998, the Resident Magistrate made no order in the case and advised Ms. Ferreira to institute civil proceedings. However, in cross-examination, he said that the Resident Magistrate gave no such advice. Further, he had no recollection that Ms. Ferreira had told him that she

needed to pay outstanding money before she could get the vehicle and that she had been told the name of the ship on which the car was.

Malicious Prosecution

13. Mr. Wilson, Counsel for the Attorney-General, submitted that malicious prosecution was not proved as there was no evidence as to how often Mr. Hobbins went to Court, nor as to any damage he suffered. He argued that it could be inferred from the facts of the case that Constable Watson had reasonable and probable cause to prosecute Mr. Hobbins. He relied on the evidence that Ms. Ferreira had complained to the police that Mr. Hobbins had failed on several occasions to return her money to her. Further, the defence did not know of the existence of Rohan Ellis until the witness statement filed on May 5, 2006.

14 “A malicious prosecution is an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge.”
[**Halsbury’s Laws of England** 4th edition, volume 45 para. 1340]

Lord Denning in **Glinski v McIver** [1962] 1 All ER 696 at 709 said that:

“[I]n order to succeed in an action for malicious prosecution, the plaintiff must prove to the satisfaction of the judge that, at the time when the charge was made, there was an absence of reasonable and probable cause for the prosecution.”

15. The uncontradicted evidence is that the Resident Magistrate made no order in the case, so that eventually Mr. Hobbins was not required to stand trial. However, the mere fact of acquittal is not sufficient to show an absence of reasonable or probable cause. Forte J. A. (as he then was) in **Flemming v Myers** 26 JLR 525 at 535 referred to **Glinski v McIver** (supra) where Lord Denning said “the plaintiff has himself to put [the facts] before the court because the burden is on him to show there was no reasonable or probable cause.”

16. Section 33 of the Constabulary Force Act introduces an alternative to this requirement, i.e., the plaintiff can instead prove that the prosecution was done maliciously.

Section 33 of the Constabulary Force Act provides:

“[In] every action to be brought against any Constable for any act done by him in the execution of his office, ... it shall be expressly alleged that such act was done **either** maliciously **or** without reasonable or probable cause; and if at the trial ... the plaintiff shall fail to prove such allegation ... a verdict shall be given for the defendant.” (My emphasis)

Here, Mr. Hobbins alleges that Constable Watson acted **both** maliciously **and** without reasonable and/or probable cause in prosecuting him.

17. I accept on a balance of probabilities the evidence that even before Mr. Hobbins had reached the police station he had informed Constable Watson that he had done no wrong as it was Mr. Ellis who played the pivotal role and who had received the money from Ms. Ferreira.

18. Why did Constable Watson ignore the information and tunnel forward with the arrest? The evidence was that Ms. Ferreira had not completed payment for the car. Constable Watson was being inundated with information pointing well away from the guilt of Mr. Hobbins.

19. Did Constable Watson honestly believe in the case he put forward? There is no evidence that Constable Watson sought to determine if a crime had been in fact committed, and if so, by whom. Without any apparent basis, he chose certain information on which to rely, and discarded contradicting information without enquiry.

20. There was every indication that if a crime had been committed, it was by someone other than Mr. Hobbins. Constable Watson was not interested in bringing the criminal to justice. His focus was on prosecuting Mr. Hobbins.

21. “Malice covers not only spite and ill-will but also any motive other than a desire to bring a criminal to justice.” [Lord Devlin in **Glinski v McIver** (supra)].

I find that Constable Watson acted with malice, i.e., he exhibited no desire to determine whether there was criminal conduct and if so by whom. He abused the process of the Court by wrongfully setting the law in motion on a criminal charge.

22. In the presence of so much information pointing towards Mr. Hobbins’ innocence, Constable Watson did not have sufficient evidence without further investigation to give him a reasonable and/or probable cause to prosecute Mr. Hobbins. In my view Constable Watson investigated this case in a biased manner. He prosecuted Mr. Hobbins **both** maliciously **and** without reasonable or probable cause. I find him liable for the tort of malicious prosecution of Mr. Hobbins.

False Imprisonment

23. Mr. Wilson submitted on behalf of the Attorney General that Mr. Hobbins had been brought before the Court in a reasonable time of 28 hours after being held by the police and there was thus no false imprisonment

24. “[F]alse imprisonment arises where a person is detained against his will without legal jurisdiction. The legal justification may bewherea police officer is given a power of arrest in circumstances where he honestly and on reasonable grounds believes a crime has been committed.” [per Carey J in **Flemming v Myers** supra at 527]

An imprisonment is lawful if it results from the exercise of a power of arrest conferred by law. Did Constable Watson investigate to determine if there were reasonable grounds for the arrest of Mr. Hobbins?

25. I find on a balance of probabilities that Constable Watson did not honestly believe a crime had been committed nor indeed were there even reasonable grounds to believe a crime had been committed. He had no legal justification to have arrested Mr. Hobbins at that time, in the absence of proper investigations. Mr. Hobbins was the victim of false imprisonment albeit for a relatively short period of time.

Assault and Beating

26. Mr. Hobbins' uncontradicted evidence is that Constable Watson held him by the waist and pulled him to the cell block. Counsel for the defence submitted that holding Mr. Hobbins by the waist and pulling him to the cell block does not amount to assault or beating.

27. Bullen, Leake and Jacob, learned authors of **Precedents of Pleading** 13th edition at page 53 discuss the tort of assault and opine that:

“[A]n assault is an act involving an imminent threat to touch another in a hostile manner with the capability to carry out such threat.”

The nature of the assault must be specified in the Statement of Claim.

“[The plaintiff] ...must allege either intention on the part of the defendant, or, if he relies on negligence, he must state the facts which he alleges constitute negligence. Without either of such allegations the bald statement that the defendant [did the act to] the plaintiff in unspecified circumstances ... discloses no cause of action
...So bare an allegation is consistent with the defendant's having exercised reasonable care....” (Per Diplock J in **Fowler v Lanning** [1959] All ER 290 at 298).

“ However, [i]f the act or conduct speaks for itself as being plainly intentional or deliberate... it is permissible to omit the word “intentional.”

[**Bullen, Leake and Jacob** (supra)]

28. Here the pleadings are imprecise, stating that Constable Watson “assaulted, beat” Mr. Hobbins. The evidence is equally vague and is that Constable Watson “held me by the waist and pulled me to the cell block...” Neither the pleading nor the evidence discloses that Constable Watson intended to assault Mr. Hobbins, nor do they specify the precise circumstances of the alleged assault. Assault has not been properly proved in my view and there were no submissions or evidence concerning the pleading of beating.

Damages

29. I consider now the damages to be awarded for malicious prosecution and for false imprisonment.

(i) **Malicious Prosecution**

Mr. Wilson, for the Attorney General, submitted that if an award were to be made for malicious prosecution, \$100,000.00 would be appropriate. He based that submission on the 2005 case of **Kerron Campbell v Kenroy Watson and the Attorney General of Jamaica**, CL C385/1998 and the 2006 case of **B & D Trawling Limited v Lewis and the Attorney General of Jamaica** CL B015/2001. Those awards would each be now equivalent to approximately \$105,000.00.

30. On the other hand, Mr. Williams, for Mr. Hobbins, submitted that \$650,000.00 would be the appropriate figure. He relied on **Ihasu Ellis v The Attorney General of Jamaica** (SCCA37/01) where that award in 2004 was \$2,000,000.00 including aggravated damages. The evidence was that Mr. Ellis had been a Justice of the Peace and

a well-known public servant and the charge laid against him was not dismissed for some four years.

31. The need to exercise caution in comparing awards is clear. The authorities on which reliance was placed were of limited assistance as the circumstances in most bore no relation to Mr. Hobbins' case. However, I apply the Court of Appeal decision of **Ellis** (supra) in particular, to determine an appropriate award.

32. Mr. Hobbins, a businessman, was subjected to malicious prosecution. He suffered the burden of mandatory court attendances for approximately six months. Though there is no supporting medical evidence, I accept on a balance of probabilities that Mr. Hobbins suffered an intense headache which persisted for weeks after he had been granted bail, and that he became nervous and was unable to concentrate.

33. I also accept on a balance of probabilities that Mr. Hobbins gave the police information which could have assisted in further investigations into whether or not a crime had been committed, and if so, by whom. I take judicial notice of the fact that in Jamaica today, the police are seldom provided with information.

34. I view an award of \$600,000.00 for malicious prosecution as being appropriate now, almost ten years after Mr. Hobbins was subjected to this tort.

(ii) **False Imprisonment**

35. Mr. Hobbins remained in custody for about 28 hours before being taken to Court and being offered bail. Mr. Williams, for Mr. Hobbins, regarded an award of \$100,000.00 as being not unreasonable, based on **Kerron Campbell v The Attorney General** (supra) where the current equivalent of \$81,000.00 was awarded for 2 ½ to 3

hours false imprisonment and on **Ellis v The Attorney General** (supra) where the equivalent of \$117,000.00 was awarded for 7 hours false imprisonment.

36. Mr. Wilson, for the Attorney General relied on several authorities where the awards for false imprisonment ranged from \$17,000.00 to \$70,000.00 and suggested that \$25 – 35,000.00 would be a reasonable award if there were to be an award.

37. The award I make is \$400,000.00 to compensate Mr. Hobbins for the 28 hours he spent, falsely imprisoned. I rely on **Ellis** (supra) where the period of false imprisonment was shorter. It is my view that to be imprisoned falsely for 28 hours cannot be regarded as Mr. Wilson submits as “a reasonable time.”

Other Claims

38. The evidence concerning Mr. Hobbins’ medical difficulties is found in his witness statement where he says he “experienced intense headaches ... for weeks” and that he “was unable to properly concentrate at work as [he] became nervous and was totally traumatized for a considerable time.” I make no award concerning this because of the insufficiency of evidence as it concerns any loss he suffered in this regard.

39. Special damages were agreed at \$25,000.00.

The Order

40. The Order is therefore judgment for the claimant.

General Damages

(i) For malicious prosecution in the amount of \$600,000.00

(ii) For false imprisonment in the amount of \$400,000.00

with interest on the total sum of \$1,000,000.00 at 6 % per annum from the date of service of the writ to date of judgment.

Special Damages

\$25,000.00.

Costs to the claimant to be agreed or taxed.

