



[2022] JMSC Civ 181

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU 2020 CV 02783**

**BETWEEN**                      **LEONARD LINDSAY**                      **CLAIMANT**  
**AND**                      **THE ATTORNEY GENERAL OF JAMAICA**                      **DEFENDANT**

Ms Renee Freemantle instructed by Yushaine Morgan attorney-at-law for the Claimant

Mr Robert Clarke instructed by the Director of State Proceedings attorney-at-law for the Defendant

June 23, 2022 and October 13, 2022

***Assessment of Damages – False Imprisonment – Malicious Prosecution – Deprivation of Liberty – Exemplary Damages – Aggravated Damages***

**MOTT TULLOCH-REID J**

**BACKGROUND**

1. The Claimant claims against the Defendant damages for malicious prosecution and false imprisonment, aggravated damages and exemplary damages arising out of circumstances that led to his arrest, conviction and then later acquittal by the Court of Appeal.
2. The Defendant failed to file a Defence to the claim and so Default Judgment was entered against him. Liability is therefore not in issue and all that is to be determined is the quantum of damages which is to be paid by the Defendant to the

Claimant. In addition to failing to file a Defence, the Defendant also failed to file a Form 8A which would have allowed him to participate in the proceedings, and counsel for the Claimant would not consent to the Defendant's attorney-at-law participating in the Assessment of Damages in any way at all. I therefore only heard from the Claimant in this matter.

3. The gist of the claim is that on January 1, 2010, the Claimant who was at the material time and still is a police officer, while in the course of his duties was informed by his superior officer that two men had been robbed in an area which he and another police officer were patrolling. They received the description of the men who were suspected of carrying out the robbery and were warned that the men were armed and dangerous. Both police officers went in search of the perpetrators. They met upon two men who fit the description given to them by their superior officer. The men accosted them (Mr Lindsay and his partner), brandishing a gun and a knife. Being fearful for their lives, the Claimant and his partner both discharged their firearms in self-defence. One of the men was killed and the other man, who was shot by the Claimant was injured. The incident was reported to the Deputy Superintendent.
4. On or about August 17, 2011 the Claimant was arrested and charged for the offence of murder. He was put before a jury of his peers and found guilty of murder. He was sentenced to 25 years' imprisonment at hard labour and was not eligible for parole before serving 12 years. He appealed the conviction and was acquitted after spending 3 years and 2 days in prison.
5. Mr Lindsay's evidence is that the Court of Appeal acquitted him on November 17, 2017 but he was not released from prison until November 20, 2017 at about 3:00p.m.

## **False Imprisonment**

6. Mr Lindsay was falsely imprisoned from the period of his acquittal to the date on which he was released. In total he was falsely imprisoned for three days. Ms Freemantle is more specific. She has indicated a period of imprisonment for 3 days and 3 ½ hours. She refers to the case of **Nicole-Ann Fullerton v The Attorney General of Jamaica Claim No 2010 HCV 1556 judgment delivered on March 25, 2011**. I have read the case. Ms Freemantle also relies on several other cases, some of which were decisions from the Court of Appeal. I found the latter set of cases to be more helpful, in particular the case of **John Crossfield v The Attorney General of Jamaica and Corporal Ethel Halliman [2016] JMCA Civ 40**. In that case, the Claimant who was a security guard was arrested for among other things dealing with cocaine and breaking and attempting to enter a warehouse. He was found to be falsely imprisoned for a period of 4 days. Morrison P awarded Mr Crossfield the sum of \$600,000 for the period of his false imprisonment. That amounts to \$150,000 per day. When the per day amount is updated using August's CPI of 123.57, the daily rate would be \$208,498.31.
7. In the **Crossfield case**, Mr Crossfield describes his time in custody in a very detailed manner. He asserts that he was handcuffed and placed in lock-up while still in his security guard uniform, he was afraid as other persons in the lock up referred to him as an informer, he was slapped in the face by one of the persons who called him an informer, he was embarrassed because people came to the lock up and saw him there, he shared a crowded cell with persons he described as "murderers" and "gunmen". He reports that the cell in which he was placed was a "filthy dirty hole with rats, roaches and every imaginable insect". The floor and walls were covered with urine and faeces, the other occupants would urinate and defecate on the floor even though buckets were provided to dispose of their waste. He developed a skin fungus, slept on the concrete floor or on a cardboard box

when he had access to one. His life in prison was from his account very uncomfortable.

8. In Mr Lindsay's case, his evidence is that after the Court of Appeal acquitted him, he thought he would be processed and released on the same day. Instead he was taken back to the Tower Street Adult Correctional Prison and informed that night that he would not be released until November 20, 2017. He panicked and could not cope. Although he was a free man he slept in a cell with two other prisoners. The space was tiny and he could not lie down and sleep but had to sleep sitting up. The ventilation was poor. The cell was only a little cleaner than cells he had stayed in prior to his acquittal. It was hot and infested with insects, cockroaches, chinks, rats and mosquitoes. He got nothing to eat on the night of November 17, 2017 as the dinner had already been served. He was offered Lasco and crackers but refused it as he was angry. He still had to urinate and defecate in a container in front of other prisoners and bathed once per day. He felt he was "approaching breaking point."
9. The next day he was moved to the hospital area and placed in a room which housed physically and mentally ill prisoners. The food he was offered to eat was undercooked and cold. He could not bring himself to eat it especially in light of the fact that had he been at home he would have been eating home cooked meals. It is an understatement to describe Mr Lindsay's situation post acquittal as "unfortunate."
10. Harvey McGregor QC in his text McGregor on Damages is referred to at paragraph 21 of the **Crossfield** decision. In it, Mr McGregor is quoted as saying:

*"The details of how the damages are worked out in false imprisonment are few; generally it is not a pecuniary loss but a loss of dignity and the like, and is left very much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty i.e. loss of time considered*

*primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation.”*

11. It is clear to me that Mr Lindsay suffered injury to feelings during the period he was falsely imprisoned. It is clear to me that he had mental suffering. He became sad because of his continued imprisonment despite his acquittal, the disappointment of not being released after his acquittal, having to endure three more days of prison life and its attendant conditions would also bring some degree of humiliation. I believe that his experience was akin to that experienced by Mr Crossfield and am therefore minded to make a similar award adjusting for inflation. I believe in the circumstances the sum of \$625,494.93 would be reasonable in the circumstances.

12. Ms Freemantle had suggested the sum of \$4M. She relied on the **Nicole-Ann Fullerton case** to support her submission. I believe though the facts of both cases can be distinguished. Ms Fullerton suffered embarrassment when she was taken in full view of passengers in an airport by police officers, she was handcuffed and taken from the airport in a police vehicle with sirens blazing, she was prevented from speaking to family members while at the police station, her arrest was televised on the news and on the front page of both major newspapers, her cell conditions left much to be desired, food was served to her through dirty cell gates so she did not eat, when she was brought to court she was again under the watchful eye of the media and strangers who took pictures of her. Ms Fullerton also had in her arsenal of pleadings documents to support a claim that she had consulted with a psychiatrist.

13. Mr Lindsay was already in prison and continued to be so held. There is no evidence that he was detained in full view of persons during the time he was falsely imprisoned. Counsel is reminded that the period of false imprisonment for Mr Lindsay is not from the date of his initial arrest which was the public event, but

rather from the date of his acquittal at the Court of Appeal when he had already served approximately 3 years. There is no evidence that he was hoisted into the public for their scrutiny and comment at this point in time, in a similar manner as was Ms Fullerton. In addition, unlike Ms Fullerton, there is no medical evidence of him suffering psychological damage. The circumstances of his false imprisonment were not as bad as those suffered by Ms Fullerton. Mr Lindsay's case is more akin to Mr Crossfield's.

### **Malicious Prosecution**

14. Ms Freemantle relied on the case of **Attorney General of Jamaica v Peter Badoo [2010] JMCA Civ 40** wherein Frank Williams JA at paragraph 92 of his decision quoted from the decision of Waller LJ in the case of **Manley v Metropolitan Police Commissioner [2006] EWCA Civ 879**. In that case Waller LJ set out the guidelines to be followed in assessing damages for malicious prosecution. He said:

*“Compensation for malicious prosecution has three aspects. First, there is the damage to a person’s reputation. The extent of that damage will depend on the person’s actual reputation and upon the gravity of the offence for which he has been maliciously prosecuted. The second aspect is the damage suffered by being put in danger of losing one’s liberty or of losing property. Compensation is recoverable in respect of the risk of conviction. McGregor on Damages 16<sup>th</sup> edition paragraph 1862 considers that an award under this head is basically for injury to feelings, unless there has been a conviction followed by imprisonment. The third aspect is pecuniary loss caused by the cost of defending the charge.”*

15. Claimant has made out all three criteria. Mr Lindsay was a police officer. He has presented evidence to this Court in the form of newspaper articles and how he was viewed following his arrest and conviction. His evidence is that he was shunned by

his colleague officers, some of whom, expressed their belief that he was guilty. He was charged and convicted of the most egregious of offences – murder. He not only suffered the danger of losing his liberty for a period of 25 years at hard labour without the possibility of parole until 12 years of his sentence had been served, but in fact lost it for three years. He has provided undisputed proof of the amount it cost him in legal fees to defend the charge that was brought against him. The question that remains is how much damages should he be awarded for having been so prosecuted.

16. Justice Sinclair-Haynes as she then was in the case of **Neville Williams v Attorney General for Jamaica Claim No 2005 HCV 00126 judgment delivered on July 1, 2009** at page 73 of her judgment quoted from Lord Woolf MR in the case of **Thompson v The Commissioner of Police of the Metropolis [1997] 2 All ER 762** in which he said:

*“In the case of malicious prosecution the figure should start at £2000 and for prosecution continuing for as long as two years, the case being taken to the Crown Court, an award of £10,000 could be appropriate. If a malicious prosecution results in a conviction which is only set aside on an appeal this will justify a larger award to reflect the longer period during which the claimant has been in peril and has been caused distress.”*

Mr Lindsay was convicted by a jury of his peers and sentenced to 25 years in prison without the possibility of parole until 12 of the 25 years had been served. He was acquitted after spending 3 years in prison when his conviction and sentence were overturned by the Court of Appeal.

17. Ms Freemantle has presented very bold submissions under this head. She relies on the case of **Roshaine Clarke v AG [2022] JMFC Full 3**. She relies on this case because it deals with the issue of the deprivation of a person’s liberty. She argues that Mr Clarke, having been deprived of his liberty was awarded the sum of \$12M solely as damages payable to him for the deprivation of his liberty. And

so since this is one aspect of what the Claimant at bar has proven, any sums payable to Mr Lindsay would have to exceed \$12M since not only was he deprived of his liberty, a right guaranteed to him by the constitution, but he also has proven the other elements set out in the **Manley case**. Further, he was convicted and spent time in prison because of the malicious prosecution of the case against him. She has suggested the sum of \$65M as a reasonable sum under the head of malicious prosecution.

**18.** The case of **Roshaine Clarke** concerns a claim for breach of constitutional right to liberty as well as for false imprisonment. The claim for breach of constitutional right was pleaded in Mr Clarke's pleadings. While, it may be true that Mr Lindsay's liberty was taken away from him, for a period of years, his constitutional right to liberty was not pleaded in the Claim Form, Amended Particulars of Claim or the Further Amended Particulars of Claim. The Full Court in **Clarke** at paragraph 125 referred to the fact that the majority decision in the case of **Julian J Robinson v Attorney General of Jamaica [2019] JMFC Full 4** had held that where constitutional rights had been breached albeit those rights had not been pleaded the court should not ignore them. The Court in **Clarke** did not agree with that position and held instead that where matters were not pleaded, they ought not to be considered by the Court. This, because the Civil Procedure Rules were in force and the rules govern the procedure for applications for redress under the constitution and those rules must be followed.

**19.** The Claimant did not his Claim Form or Particulars of Claim, plead the issue concerning deprivation of liberty as did the Claimant in **Clarke**. In the circumstances my treatment of damages for malicious prosecution will be dealt with in much the same way as similar cases that have gone before wherein deprivation of liberty was considered as one of the features to take into account per **Manley** and not where deprivation of liberty in breach of the constitution was considered as a cause of action in and of itself for which a remedy was sought.



20. In assisting me in coming to my decision as to reasonable damages payable for malicious prosecution, I found two cases presented by Ms Freemantle most helpful. They are the **Neville Williams case** and the **Peter Badoo case**.
21. In **Neville Williams** the Claimant was accused of raping a female. He was invited to attend on the police station which he did. While at the police station he was shackled to a chair and told to hand over his underpants. The court found that while this was normal procedure for the offence for which he was charged, the actions were humiliating especially for someone who should not have been accused. Mr Williams was arrested and spent 4 months in jail before being offered bail. He was later tried and convicted of rape and assault occasioning bodily harm. He was sentenced to 7 years for the rape and 3 years for the assault to run concurrently. He spent 3 years in prison at which point in time on appeal his conviction and sentences were overturned.
22. The circumstances of his incarceration were harsh. He was stabbed on his arm and bitten by a fellow inmate. He was in constant fear of his life. He lost contact with his girlfriend and infant daughter because his girlfriend stopped visiting him. His time behind bars was described as torturous and horrifying. His conviction was overturned when he indicated he would submit to DNA testing. It appears that the DNA testing had already been done prior to the trial, found not to be a match to Mr Williams but the Director of Public Prosecutions was not made aware of this. When the DPP was made aware, steps were taken to have conviction quashed. The DPP's office offered an apology on television. There was no evidence as to damage to Mr Williams' reputation. An award of \$6M was made in his favour for malicious prosecution, which sum updates to \$13,504,918.
23. Like Mr Williams, Mr Lindsay was convicted and spent time in prison before he was acquitted. However, I believe that Mr Lindsay's situation was worse than Mr Williams. It is true that Mr Williams was stabbed and bitten, which is not true for Mr Lindsay. However, Mr Lindsay's evidence is that he felt in constant fear of life

especially from persons who he had had a hand in their being incarcerated. Unlike Mr Williams, there is no evidence that upon his release he was offered an apology. Mr Lindsay was charged with murder. He describes in detail the embarrassment he felt when he was arrested in front of his colleagues and fingerprinted. He says he was shunned by his colleagues and some of them expressed their belief that he was guilty. He received no support from them even though he had enjoyed a good relationship prior to his arrest and his being charged. He said the people in Manchester made disparaging comments about him and called him murderer. He attended the Mandeville Parish Court on 19 occasions to deal with the preliminary enquiry proceedings. At the Circuit Court he attended on 9 occasions before the trial started. When the trial started it lasted 25 days. When he was convicted his reputation suffered another blow.

**24.** Mr Lindsay described the trial process as a “*gruelling and arduous experience*”.<sup>1</sup> He was “*terribly disappointed*”<sup>2</sup> when the no case submission made on his behalf was unsuccessful. He was “*crushed*”<sup>3</sup> when his guilty verdict was announced. He “*felt he would collapse in despair*” and “*felt angry when [he] considered [he] was simply executing his duties*”<sup>4</sup>. When his conviction was reported in the Jamaica Observer he was “*devastated*”<sup>5</sup>.

**25.** Paragraphs 28 – 38 of Mr Lindsay’s Witness Statement describes his period of incarceration. He says he shared a cell with two other persons. The cell was small about 6ft wide and 7ft or 8ft long. He slept on a makeshift hammock while the other men slept on the floor on sponges. He also slept on the floor on sponges from time to time. The cell was dirty and filthy and overrun with rats, chinks, roaches and other insects. The floor and the walls had faecal matter and urine on them. He developed a skin fungus. He was disgusted by the stench and condition

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<sup>1</sup> Paragraph 19 of the witness statement of Leonard Lindsay

<sup>2</sup> *ibid*

<sup>3</sup> Paragraph 22

<sup>4</sup> *ibid*

<sup>5</sup> Paragraph 23

of the cell. The cell was hot and poorly ventilated and when the sponges became soaked with the sweat of their users, they became infested with chinks. When the sponges became infested, he slept on the floor of the cell until the sponges were replaced. He had trouble sleeping because of the vermin in the cell and he was very stressed because of his predicament.

**26.** Mr Lindsay's evidence is also that he had to urinate or defecate in the presence of his cellmates. At nights he had to stay in the hammock so as not to disturb his cellmates who were on the floor on their sponges beneath his hammock. If he wanted to use the toilet in the night, he had to seek the permission of his cellmates to descend from the hammock, defecate and then dispose of the faeces through a window. If he wanted to urinate, he would stay in the hammock, urinate in a bottle, dispose of the urine the following morning and then wash the bottle out.

**27.** He described the rules of the prison as being strict. They were released from their cells at 8:30am. He says the bathrooms were no better than the cells as the toilets were old and dirty, they did not have seats and they were covered with urine and excrement. He had to walk with a bucket to flush the toilet and use a crocus bag to shield himself while he defecated. He got one bucket of water to bathe himself. The meals served were cold and tasteless. They had to return to their cells at 10:30am then let back out around lunch time where they could play basketball or football until 3pm at which point they had to return to their cells until 8:30am the following morning.

**28.** On an occasion when he was taking a shower, another inmate refused to give him his privacy and threatened to "lick" him. He was subsequently often harassed by that prisoner. Another prisoner threatened to stab him. He was in constant fear because of those incidents and as a result became withdrawn.

**29.** Given all of the above, Mr Williams' award would have to be increased to reflect the differences between the cases, in particular the charge of murder versus the charge of rape, the sentence of 25 years' imprisonment versus 7 years, Mr Lindsay's position as a police officer versus Mr Williams' position as a construction worker and mechanic, as well as all the circumstances of Mr Lindsay's imprisonment.

**30.** In the **Peter Badoo case** Williams JA considered the reputational injury suffered by Badoo as well as the length of the prosecution in determining the level of hurt suffered. Badoo was charged with murder, his prosecution lasted for 7 years, the circumstances under which he was arrested, charged and prosecuted were shocking as he had come across a body and alerted the police to it and although he was carrying out his lawful duty he was nevertheless charged with an offence, he was a property and security manager at a hotel and so his arrest and charged impacted his reputation, the prosecution ended with no evidence offered against him and the fact that he had to appeal to the Supreme Court for Bail, it having been refused him in the lower court meant that an award in the amount of \$6.5M would be fairer than what the trial judge had previously granted. \$6.5M updates to \$8,759,051.

**31.** Mr Lindsay's prosecution from time to arrest until the trial at which he was convicted lasted approximately 3 years and then from the date of conviction to date of appeal, another 3 years. The entire process took approximately 6 years. The circumstances which led to his prosecution were also like Badoo "most unfortunate." He was carrying out duties and while in the course of his duties a suspect who attacked him and his partner was killed. I have read the decision of Sinclair-Haynes JA in the Court of Appeal decision overturning Mr Lindsay's conviction. He was a police officer, a person who by virtue of his job, is looked on at a higher standard than the ordinary citizen, the prosecution ended with a conviction and sentence of 25 years. Mr Lindsay's circumstances are again more serious than those suffered by Mr Badoo.

**32.** I am of the view that the sum of \$17M for malicious prosecution would be reasonable in the circumstances. The difference between Mr Williams and Mr Lindsay is really with respect to reputation, I believe a police officer is held to a higher standard than a construction worker or mechanic. In any event in Mr Williams' case there was no evidence with respect to injury to reputation but in Mr Lindsay's case there is evidence before me in the form of newspaper articles which set out the conclusions made by readers of print in general circulation about Mr Lindsay.

### **Aggravated and Exemplary Damages**

**33.** In the case of **Delia Burke v Deputy Superintendent Carol McKenzie and the Attorney General of Jamaica [2014] JMSC 139** at paragraph 73, McDonald-Bishop J as she then was said

*"It is settled as a matter of law that aggravated damages are compensatory in nature and are awarded to a claimant for the mental distress, which he suffered owing to the manner in which the defendant has committed the tort, or his motive in so doing, or his conduct subsequent to the tort."*

McDonald-Bishop J said that the manner in which the false imprisonment was carried out could have an impact in whether the damage to a claimant was aggravated or mitigated.

**34.** Mr Lindsay's evidence with respect to his experience from the time of his arrest to his acquittal at the Court of Appeal shows that he underwent humiliating circumstances. I do not find that the actions of the police officers in prosecuting the claim was high handed, insulting, malicious or oppressive. There is nothing on the evidence to suggest that that was the case. While their investigation may be described as not the best that it could be, I will not in making my determination of

award under this head take any of those elements into account. I will however consider the mental distress he had to endure while in prison, the concerns he had about his family's financial situation during the period of his prosecution because he was the main breadwinner and the humiliation of being arrested and convicted.

**35.** Morrison JA in the **Crossfield case** set out the aggravating circumstances Crossfield suffered. He was handcuffed and locked up while still in his uniform. The fact that he was in his uniform attracted the visitors to the police station to see him. This was embarrassing for him. He was forced to share a cell with "undesirables", called an informer and threatened. He was assaulted in the presence of the police, the cell in which he was kept was filthy and unsanitary. He said all those matters caused him embarrassment, distress and humiliation.

**36.** Mr Lindsay was handcuffed in the presence of his colleagues at the Mandeville Police Station. He however got bail shortly thereafter. The evidence is that he encountered two persons whose incarceration he had aided in while he was a police officer. He said he was anxious and fearful of retribution from them (paragraph 37 of the witness statement). Thankfully, none came. In addition, someone wanted to "lick" him but there is no evidence that he ever did. There is no evidence that he was assaulted. The only aggravating factors Mr Lindsay experienced were the sharing of the cell with the prisoners, the length of time his acquittal took to come into effect (6 years versus Crossfield's 4 years and 10 months) and injury to his reputation. I believe that these are in the same range as the **Crossfield case**. Crossfield was awarded \$400,000 in aggravated damages which updates to \$1,304,000. I believe Mr Lindsay should be awarded a similar sum for aggravated damages.

**37.** Exemplary damages are punitive in nature. White JA in the case of **Attorney General and anor v Gravesandy (1982) 19 JLR 501, 504** said that as far as exemplary damages is concerned

*“...nothing should be awarded unless he [the Judge] is satisfied that the punitive or exemplary element is not sufficiently met within the figure which has been arrived at for the plaintiff’s solatium which the subject of the compensatory damages in the assessment of which aggravated damages will be awarded.”*

**38.** I have already said I do not find that the police officers in prosecuting the case against Mr Lindsay acted in a high handed and/or oppressive manner. I do not find that their action in prosecuting the case against Mr Lindsay, notwithstanding the outcome, warrants an award under the head of Exemplary Damages. In the event that I am wrong in my conclusion on this issue, I am also of the view that sums already awarded under the various heads of damages that the Claimant has successfully submitted on, are sufficient to punish the Defendant for the actions of the servants and/or agents of the state who falsely imprisoned and maliciously prosecuted Mr. Lindsay.

**Special Damages**

**39.** There being no objection from the Defendant, Special Damages in the amount of \$2,150,000 as pleaded and proved is awarded.

**40.** In light of the above, I now order as follows:

- a. Damages are assessed in favour of the Claimant against the Defendant who is to pay the Claimant:
  - i. Special Damages in the sum of \$2,150,000 plus interest at 3% per annum from November 17, 2017 to October 13, 2022.
  - ii. Damages for False imprisonment in the sum of \$625,494.93 plus interest at 3% per annum from November 17, 2017 to October 13, 2022.

- iii. Damages for Malicious Prosecution in the sum of \$17M plus interest at 3% per annum from August 17, 2011 to October 13, 2022.
  - iv. Aggravated Damages in the amount of \$1,304,000.
  - v. Costs in the claim which are to be taxed if not agreed.
- b. The Claimant's attorneys-at-law are to file and serve the Judgment.