

JUDGMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2006 HCV 3368

BETWEEN	RAYON WILSON	CLAIMANT
AND	THE ATTORNEY GENERAL FOR JAMAICA	1 ST DEFENDANT
AND	DETECTIVE MEEKS	2 ND DEFENDANT

CONSOLIDATED WITH

CLAIM NO. 2006 HCV 4368

BETWEEN	HOWARD HASSOCK	CLAIMANT
AND	THE ATTORNEY GENERAL	1 ST DEFENDANT
AND	DETECTIVE MEEKS	2 ND DEFENDANT

Mr. Charles Campbell for Claimants.

Mr. Nigel B. Gayle and Miss Deidre Pinnock instructed by the Director of State Proceedings for the Defendants.

Heard: 16th and 17th May 2011 and 18th May 2011.

Malicious Prosecution and False Imprisonment

Brooks J :

THE FACTS

The facts in these consolidated claims are relatively uncomplicated. Mr. Rayon Wilson worked as a sales representative for Wisynco Trading Company, in 1999 to 2000. He owned a truck and used that truck to do deliveries for Wisynco of its goods. He employed Mr. Howard Hassock to drive the vehicle for him. On September 13, 2000, whilst Mr. Wilson was admitted as a patient at the Port Antonio Hospital, he was visited by two police officers, they eventually handcuff him to the hospital bed, at 9 o'clock in the evening, approximately and he remained in that condition until September 16, 2000, at about 3 o'clock in the afternoon.

On September 17, while still at the hospital, he was charged by the 2nd defendant, Detective Sergeant Richard Meeks and was granted bail on September 20, while still at the hospital.

His passport was then taken by Detective Sergeant Meeks. Mr. Wilson appeared in the Resident Magistrate's Court for the parish of the St. Catharine, to answer to the charges laid against him, after a number of appearances without the

matter being tried.

Mr. Hassock was also arrested. Mr. Hassock was detained at about 7 o'clock in the morning on the 24th of February, 2001, again by Detective Sergeant Meeks. He was placed in the cells in the Central Police Station at about 3 o'clock in the afternoon and remained in custody until the 2nd of March, 2001, when he was bailed to attend court in Spanish Town on the 20th of March, 2001.

There he and Mr. Wilson both attended before the learned Resident Magistrate. This case lingered on until the 19th of March, 2002. So, in total of 14 joint appearances by the men without the case being tried.

On the 19th of March, 2002, the learned Resident Magistrate adjourned the case without a bail on the 21st of March, 2003. Mr. Wilson and Mr. Hassock had the matters brought back before the court and there the learned Resident Magistrate made a No Order, concerning the offering of any indictment. This was a resolution of the case in favour of both claimants, this is Mr. Wilson and Mr. Hassock.

THE CLAIM

In 2006, each of the claimants instituted claims against Detective Sergeant Meeks and the Attorney General. They both claimed damages for malicious prosecution and Mr. Hassock has also claimed damages for false imprisonment.

THE DEFENCE

The defendants maintained that Detective Sergeant Meeks had good cause to detain and prosecute these men for what he reasonably suspected to be criminal offences committed by them.

EXAMINATION OF THE EVIDENCE

The claimants say that Detective Meeks and the defence team, have got it wrong from the beginning as there was no reasonable basis for charging either men for fraudulent conversion on any of the charges for which they were brought before the Resident Magistrate's Court in St. Catharine. Mr. Wilson said that, his job as a sales representative for Wisynco was to receive

orders for customers including Kamal Variety Limited in Port Antonio, he would fax these orders to Wisynco, the orders would be processed and the goods shipped along with invoices to the customers. Shipping was by way of road transport. A number of vehicles were used and his vehicle was one of the several, but he had nothing to do with the actual delivery to the customers. Goods were sold on a credit basis to Kamal.

On Mr. Wilson's evidence, the next involvement that he had was that on a monthly basis he would receive for delivery to the customer the monthly statement for goods delivered during that month. He did not see the statement before delivery as they were in a sealed envelope, because the normal process at the customer's end was the reconciled invoices received during the month as against the statement and delivered to him a cheque for the amount due. He would sometimes witness the reconciliation process and also saw the cheque which he would deliver to Wisynco. He stressed that he had no involvement with the delivery of goods and Detective Sergeant Meeks had no basis to arrest and prosecute him.

Mr. Hassock testified as to the delivery. He said that he would receive the goods along with the

invoice in duplicate from the Wisynco warehouse. The invoice would be checked against the goods at the warehouse and the license number of the delivery vehicle would be written on the invoice. He says that he would transport the goods to the customer and in the case of Kamal he knew the receiving clerk by face if not by name.

They would check the goods receipts as against the invoice signed. A copy signifying receipt of the goods and return the signed copy to him. They would retain their copy of that invoice.

He would then return the signed copy of the invoice to Wisynco and there was a system to ensure that invoices are returned. In relation to deliveries to Kamal, that is exactly, he says, what he did and he had nothing to do with any claim of none delivery.

Detective Sergeant Meeks gave evidence. He said he received complaints from Kamal's principal, Mr. Garfield Sinclair. He received information from the operation supervisor at Wisynco, Mr. Campbell, and from its principal Mr. Mahfood, and based on those report he was of the view that goods totaling 5.4 million dollars had been supplied by Wisynco, ostensibly to Kamal, but these goods were never received by Kamal. The method of achieving the fraud, based on his investigations, was that the

signature of the Receiving Clerk at Kamal was forged on some 77 invoices.

Sergeant Meeks interviewed the clerks and they denied ownership of the signatures.

The investigations led to a vehicle owned by Mr. Wilson and driven by Mr. Hassock. Although what was told to him, that is Detective Sergeant Meeks, would normally be hearsay. I think that it falls within the subramanian principal as to what caused him to act the way that he did. It is based on these investigations that Detective Sergeant Meeks says that he arrested and charged these men.

His explanation for holding Mr. Hassock for seven days before bailing him for court, was that he wanted to do a question and answer with Mr. Hassock and wanted to have Mr. Hassock's attorney present. But, Mr. Hassock did not get an attorney of his choosing for sometime. It was after the attorney was secured that he questioned Mr. Hassock and granted him bail.

Detective Sergeant Meeks' explanation as to the failure of the case to be tried was that adjournments were applied for by defence counsel and also that witnesses did not turn up. He says that the file was otherwise ready.

FACTUAL DISPUTES

The only disputes as to fact, or I should say, the main dispute as to fact, were:

- (a) Whether Detective Meeks told the men what they were each being charged for;
- (b) Whether the prosecution's case was ready when the case was eventually adjourned sine die; and
- (c) The date of the fire which destroyed documents at the Spanish Town courthouse.

On the first issue I do not accept that the detective did not tell each man what he was charging them for. Neither claimant was credible on this point. Mr. Wilson also said that he was fired by Wisynco, but didn't know if it was in relation to the matters for which he had been placed before the court. By contrast, Mr. Hassock made it clear that there were things being said at Wisynco about Mr. Wilson, and as a result Mr. Wilson's truck for which Mr. Hassock was the driver, was barred from Wisynco premises. It is inconceivable that these

matters would not have come to Mr. Wilson's attention. I find that Detective Sergeant Meeks did tell each man what he was charging them respectively for.

On the second issue as to fact, I accept the evidence of the claimants that the case was not completed in 2002. Several spontaneous statements by both claimants demonstrated that the Resident Magistrate was unhappy with the matter not being ready for trial.

I do not believe Detective Sergeant Meeks when he says at paragraph 22 of his witness statement, that the prosecution's file was complete. Even the defence counsel in this trial, suggested to Mr. Wilson that one of the reasons for the case being adjourned without a date, was because it was still being investigated. Clearly the case was still not ready in 2003, when the claimants had it relisted, Sergeant Meeks was present, but the case was still not ready for prosecution. This leads me to the third major dispute of fact.

Detective Sergeant Meeks, says that a fire destroyed his section of the Resident Magistrate's Court in Spanish Town, in early 2003, and that the fire destroyed the file preventing it from being prosecuted.

I find, based on the documentary evidence, particularly the letter of January 11, 2006, which is exhibit 7, demonstrates that the fire was on the 11th of March, 2004, and so I reject Detective Sergeant Meeks' testimony on that point. Mr. Campbell on behalf of the claimants raised issue of the discrepancies in Detective Sergeant Meeks' evidence concerning the dates of the arrest and the charge of each of the claimants, and says that these discrepancies along with certain other developments in 2007, go towards discrediting Detective Sergeant Meeks as being reliable as a witness, particularly in respect of the time of instituting the prosecution against each of these claimants.

I cannot agree with this submission, I find that the witness statement in which Detective Sergeant Meeks has Mr. Hassock being arrested before Mr. Wilson, being made some three to four years after the event, contained genuine errors as to the dates of arrest and charge and do not result in impugning Detective Sergeant Meeks' evidence concerning his motivations to arrest and charge each man.

THE LAW AND APPLICATION

FALSE IMPRISONMENT

On the issue of imprisonment, the law is set out by Justice of Appeal, Carey in ***Flemming v Myers and the Attorney General*** [1989] 26 JLR 525, in particularly at page 527c. There the learned Jurist said:

'The action of false imprisonment arises where a person is detained against his will without legal jurisdiction. The legal justification may be pursuant to the valid warrant of arrest or where, by statutory powers, a police officer is given the power of arrest in circumstances where he honestly, and on reasonable grounds, believes a crime has been committed'.

At a later point, Justice Carey said;

"It follows ineluctable that there can be no false imprisonment where there is a lawful arrest in the sense I have adumbrated".

At page 530 of the same report at letter (d), Justice of Appeal Carey said:

'In my respectful view an action for false imprisonment, may lie where a person is held in custody for an unreasonable period after the arrest and without either being taken before a Justice of the Peace or before a Resident Magistrate.'

In Jamaica where a police officer is purported to act in the execution of his duty, **section 33** of the ***Constabulary Force Act***, requires the claimant to prove that the officer has acted either maliciously or without reasonable or probable cause.

MALICIOUS PROSECUTION

In respect of malicious prosecution, the law is that, for an action of malicious prosecution to succeed, the claimant must prove on a balance of probabilities the followings:

- (i) That the law was set in motion against him on a charge for a criminal offence;
- (ii) That he was acquitted of the charge or that otherwise it was determined in his favour;
- (iii) That when the prosecutor set the law in motion he was actuated by malice or acted without reasonable or probable cause; and
- (iv) That he suffered damage as a result.

Authority for those propositions can be found in the case of ***Wills v Voisin*** [1963] 6 WIR 50. Chief Justice Wooding at page 57, addressed that particular point, the case of '***Flemming***' also addressed those issues.

There can be no contest here that the law was set in motion by the officer and that the prosecution was determined in the claimant's favour.

Lord Denning in ***Glinski v McIver***, (1962) 1 ALLER 696, at 709, says:

"In order to succeed in an action for malicious prosecution the plaintiff must prove to the satisfaction of the Court that at the time when the charge was made there was an absence of reasonable and probable cause for the prosecution"

I made particular emphasis "at the time when the charge was made".

Section 33 of the ***Constabulary Force Act***, is also relevant for these purposes. It requires the claimant to prove, as I said before, on a balance of probabilities that the prosecution was instituted either maliciously or would want reasonable or probable cause. In the instant case, Detective Sergeant Meeks says he was given certain information. This has not been disputed by the claimants that there were cases of invoices where the receiving clerks said that their signatures were forged.

The information presented to Detective Sergeant Meeks was that Wisynco dispatched goods to Kamal, which would have been based on orders

made by Mr. Wilson and having dispatched in a truck owned by Mr. Wilson and driven by Mr. Hassock, the copy invoices were returned to Wisynco and statements prepared based on those invoices, but that Kamal insisted that it never got those goods and that the signatures of the persons purported to receive those goods were in fact, forgers. There was also action taken by Wisynco against the claimants in circumstances of controversy, and finally, these men were not known to Sergeant Meeks before. Those factors are important by way of context.

Based on the above I find that:

- (i) The law was set in motion by Detective Sergeant Meeks in respect of each of the claimants. Detective Sergeant Meeks testified that he received the reports, that he did the investigations and as a result he posed certain questions to himself. He applied independent thought in respect of these questions and arrived at a decision in respect of each claimant.

It cannot be said that he was prevented from applying an independent mind to the situation as in the case of ***Martin v Watson*** (1996)1 AC 74, or any of the similar cases reviewed by the Court of Appeal in ***Lattibeaudiere v Jamaica National Building Society et al***, unreported decision of our Court of Appeal, 2010 JMCA, CIV 28, delivered 2ND July 2010.

- (ii) The prosecution though not ending in an acquittal was resolved in favour of both these claimants. This issue was examined in the case of ***Keith Bent et al. v The Attorney General***, Suit No. 1998/ B330, 384 and 385, delivered December 19, 2006. Although in this case I applied the improper test in terms of onus of proof, I am still of the view based on the authorities cited and the analysis in that case that a “No Order” is a resolution of the prosecution in favour of the claimant.

The exhibit number 5, which is a letter dated 25th of March, 2003, from the

clerk of courts of the Resident Magistrate's Court in St. Catharine, clearly shows that this was a case ending in a No Order. The case of ***the Attorney General v Lewis, SCCA 73 of 2005***, delivered on the 5th of October, 2007, cited by Mr. Gayle, does not apply to this situation as the court in ***Lewis*** was dealing with a question of whether there was an acquittal that is not in contention in the instant case.

- (iii) Thirdly, I find that the claimants have not proved that Detective Sergeant Meeks was actuated by malice or that he acted without reasonable or probable cause or acted with any motive other than to bring an offender before the court. I find that the defendants must succeed on the question of malicious prosecution. In respect of false imprisonment, only Mr. Hassock has claimed that this court was perpetrated against him.

I find that in light of the evidence, especially that given by Mr. Wilson, that it would have been reasonable for Detective Sergeant Meeks to have arrested Mr. Hassock, but that initial lawful arrest has been made unlawful by the fact that he held Mr. Hassock for too long before taking him to court.

Persons detained have a constitutional right to be taken to court without delay, although the bail end as it ensued, they should have the question of bail considered within 24 hours. Mr. Hassock was detained for seven days before he was so brought. There is absolutely no justification for the delay to say that he was waiting for Mr. Hassock to get a lawyer, is simply not good enough. Detective Sergeant Meeks' real motivation was to question Mr. Hassock before charging him and that is what will result in the improper detention following from the '*Flemming*' case.

This converts an initial proper detention

to a wrongful detention, *ab initio* or from the very beginning it cannot be divided as Mr. Gayle has submitted. Mr. Hassock must succeed on this ground. I now turn to the question of damages for false imprisonment.

GENERAL DAMAGES FOR FALSE IMPRISONMENT

It seems to me that the figures which were used for what would be hourly rates have been applied, extended for periods, extended into days and I do not find that that was the original intention. I am guided in this consideration particularly by the decisions of ***Ferron v the Attorney General and Brown (1990) F 046, at common law***, delivered on the 31st March 2005, and ***Bennett v the Attorney General [1996] 33 JLR 8***.

Based on those cases, I find that for seven days detention inflicted on Mr. Hassock, I will award him the sum of \$350,000.00 for general damages. I would not award him any of the special damages claimed as those are associated with the malicious prosecution in which claim he has failed.

Although there was not sufficient effort made

by Detective Sergeant Meeks to place the case in its state of readiness, that does not relate back to the false imprisonment. I do not find that award of either aggravated damages or exemplary damages are appropriate in these circumstances.

CONCLUSION

In conclusion, therefore, I find that Detective Sergeant Meeks had sufficient cause to suspect both claimants and therefore to charge them for the offences for which they were placed before the Court. The claims for malicious prosecution must therefore fail.

Detective Sergeant Meeks did however, improperly detain Mr. Hassock after his initial lawful arrest. The improper detention was for the purpose of questioning Mr. Hassock and it rendered the initial detention improper and therefore, Mr. Hassock is entitled to compensation for that improper detention.

The orders are therefore as follows :

ORDERS

- (i) Judgment for the defendants in Claim No. 2006 HCV 3368;
- (ii) Judgment for the claimant in Claim No. 2006 HCV 4368, with damages assessed in the sum of \$350,000 for false imprisonment, with interest thereon, at the rate of 3% per annum from the 15th December, 2006 to 18th May, 2011; and
- (iii) By consent, each party is to bear its own costs.