



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015HCV03386

BETWEEN	ROSALEE STEWART	CLAIMANT
AND	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

IN CHAMBERS

Mr. Aon Stewart instructed by Knight Junior and Samuels for the Claimant.

Miss Faith Hall instructed by the Director of State Proceedings for the Defendants.

HEARD: 12th June & 7th July 2017

**False Imprisonment - Malicious Prosecutions- Assessment of Damages
Aggravated Damages- Exemplary or Vindictory Damages.**

CORAM: BROWN, Y. J., (Ag.)

- [1] On or about July 1, 2014, at approximately 6:30 p.m., the Claimant avers that she was exiting Basu Superstore at 77 ½ Slipe Road in the parish of Kingston, when in full view of a crowd, she was arrested, restrained and detained by two members of the Jamaica Constabulary Force (JFC).
- [2] These officers she identified as Corporal Dane Frater and Constable Nicoy Martin, both of whom were attached to Cross Roads Police Station in the parish of St. Andrew.

- [3] The Claimant contends that she was ushered to the Cross Roads Police Station where she was detained for two hours. During that period, at the behest of Corporal Frater, she went into a room and as ordered, she undressed before a female officer to display a tattoo which she has on her lower right side.
- [4] Subsequently, she was charged for obstructing a police officer; using abusive and calumnious language; and disturbance of peace and good order. When she appeared in the Corporate Area Petty Sessions Court on December 10, 2014 and February 25, 2015, the Claimant was acquitted of all the charges.
- [5] Noting that on that fateful day of July 1, 2014, the police officers in execution of their duties as servants and or agents of the state, acted either maliciously or without reasonable and probable cause; the Claimant said she suffered embarrassment, humiliation and disgrace.
- [6] As such, she filed a claim against the Attorney General seeking damages for false imprisonment and malicious prosecution, as well as aggravated and exemplary damages or vindicatory damages.
- [7] On the 22nd of July 2015, the defendant filed an Acknowledgement of Service in relation to the Claim Form and Particulars of Claim. However, the defendant was denied an extension of time to file a defence when that application was heard before the learned Master R. Harris on May 5, 2016.
- [8] A Judgment in Default of Defence was therefore entered against the defendant on May 10, 2016 and the matter was referred for an assessment of damages. At the assessment of damages, the Claimant's witness statement was admitted as her evidence-in-chief. This was unchallenged and the submission of \$359,000 for special damages found favour with the defendant.
- [9] Consequently, I will not hesitate to make an award of \$359,000 for special damages.

- [10] My attention will now be centered on the issue of general damages for false imprisonment and malicious prosecution, as well as aggravated and exemplary damages or vindictory damages.

False Imprisonment

- [11] Both Counsel contended that the case of Keron Campbell v Keroy Watson and the Attorney General of Jamaica; CLC 383 of 1998 was a most suitable guide for an award for false imprisonment in the case at bar.
- [12] In the case aforementioned, the Claimant who was falsely imprisoned for 2 ½ to 3 hours, was awarded the sum of \$70,000 in January 2005. That figure updates to \$199,180 using CPI of April 2017.
- [13] Being mindful that the Claimant at bar was detained for 2 hours, I will not depart too far from the figure stated in the Keron Campbell case, and so, I deem an award of \$195,000 appropriate. Nevertheless, I must indicate that, that figure is limited solely to the claim for false imprisonment.
- [14] Now, the element of embarrassment, humiliation and disgrace permeated the Claimant's evidence. This, I believe, must be addressed under the rubric of False Imprisonment. The remark at paragraph 37-007 McGregor on Damages (17th edition), is very instructive.

It states:

“The details of how damages are worked out in false imprisonment are few: generally, it is not a pecuniary loss but of dignity and the like...the principal heads of damage would appear to be the injury to liberty ie. loss of time...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. This would all be included in the general damages which are usually awarded in these cases...”

- [15] As a result of her ordeal, the Claimant stated that when the incident took place she was “so depressed, ashamed, physically shaken so much that it cause me to be withdrawn emotionally and sexually from my spouse Errol Pearson for a week...”
- [16] In his evidence, Mr. Pearson confirmed that bit of the Claimant’s testimony regarding her detachment from him.
- [17] While it is comprehensible that this experience would have engendered an emotional trauma, the degree or extent of Miss Stewart’s emotional pain was not captured in a medical or psychological report.
- [18] This however, does not overshadow or downplay the fact that she must be awarded for this type of suffering. Furthermore, subjecting her to putting her body on display so that an officer could view her tattoo was unfathomable.
- [19] Neither Counsel dealt specifically with the emotional element as deserving separate consideration for compensation, however, I will include this in the award for false imprisonment. Thus the award under this head will be augmented by \$100,000 thereby bringing its total to \$295,000.

Malicious Prosecution

- [20] ***Roderick Cunningham v Attorney General of Jamaica***; 2014 JMSC Civ 30 underscored the factors which are of relevance to a court in determining the award for malicious prosecution

They are:

- (1) The seriousness of the offence
- (2) Length of time the prosecution lasted

- (3) The number of times the Claimant attended court
- (4) Any damage to reputation or credit
- (5) Mental distress or anxiety
- (6) Humiliation, disgrace or any inconvenience and discomfort caused by the charge.

[21] Thus, placing reliance on ***Robert Salmon v. Senior Superintendent Elan Powell and the Attorney General of Jamaica***, [2012] JMSC Civil 15, Counsel Mr. Stewart urged the Court to award the Claimant the sum of \$664,000 for malicious prosecution. That case involved a minor offence, the prosecution of which lasted for about 7 months. It attracted an award of \$500,000 and when updated using April 2017 CPI, amounts to \$663,616.

[22] Miss Hill, on the other hand, stated that an award of \$500,000 was more suitable. She posited that while the prosecution of both cases lasted 7 months, in the case at bar, unlike the other (Salmon), the Claimant attended Court twice. On her first appearance, one of the charges was disposed of and on her next visit, she had a similar experience regarding her other two matters. Furthermore, Miss Hill stated, “there was no evidence that the prosecution had any special effect on the claimant,” (Stewart).

[23] This view advanced by Miss Hill resonates with me, in that the facts pertaining to malicious prosecution in the Robert Salmon case are more egregious than those in the instant matter. Although the time frame for prosecuting both are similar, the Claimant Salmon was deprived of his mini-bus for 27 days, this being his source of income.

[24] After careful consideration of both Counsel’s arguments under this head, and in reviewing the case submitted, I find that an appropriate award for malicious prosecution is \$550,000. I must indicate that I gave no thought to the emotional

element under this heading as same was a feature of the false imprisonment award.

Aggravated and Exemplary Damages or Vindictory Damages

[25] The Claimant's aggravated and exemplary damages were particularized as follows:

- (1) Maliciously or without reasonable or probable cause arrested and detained the Claimant in full view of the public
- (2) Maliciously or without reasonable or probable cause caused the Claimant to be detained at the police station in full view of the public causing her to feel humiliated, disgrace and embarrassed.
- (3) Maliciously or without reasonable cause sending the Claimant to enter into a room where Corporal Dane Frater ordered her to undress before a female officer whose name is unknown to her, to show her tattoo which is located on her (Claimant's) lower right side. The Claimant felt humiliated, disgraced and embarrassed by those actions of the police.

Counsel Mr. Stewart submitted that an award for aggravated and exemplary or vindictory damages was warranted in this case at bar.

[26] He recounted the Claimant's narrative from the moment the police officer walked behind her in the store armed with handcuffs, to her being taken to the holding area at the police station and the showing of her tattoo. These actions of the police, as agents of the state, amounted to a breach of the Claimant's constitutional rights, Counsel mentioned in his written submissions.

[27] He offered for guidance, the case of *Roderick Cunningham v The Attorney General of Jamaica* [2014] JMSC Civ 30, where an award of \$1,000,000 was made for exemplary damages. This figure updates to \$1,000,001 using April 2017 CPI.

- [28] However, Miss Hill argued to the contrary. She posited that the facts and circumstances of the instant case do not give rise to any award under those heads. She also pointed at the dissimilarities between the two cases.
- [29] In my reading of Roderick Cunningham, I must give credence to Miss Hill's position. While Cunningham's prosecution lasted for 4 $\frac{3}{4}$ years, he was mandated to report daily for about 3 years at the Vineyard Town Police Station and thereafter every other day at another police station-and he was disabled.
- [30] On the other hand, there is no evidence that any reporting conditions were attached to Miss Stewart's station bail. Whereas Mr. Cunningham was charged with the serious offences of Shooting with Intent, Wounding with Intent, Illegal Possession of Firearm and Ammunition, the charges in the instant case were for minor offence.
- [31] Based on the aforesaid, I would not regard the Rodrick Cunningham case as a useful pointer for the case at bar.
- [32] In *Brooks v Bernard* [1964] AC, 1129, Lord Devlin illustrated three categories of cases which would warrant the consideration for exemplary damages. The first of the three is of relevance here and it is stated as "the oppressive, arbitrary or unconstitutional action by the servants of the government."
- [33] Against that backdrop, Counsel Miss Hill noted that the actions of the police officers towards the Claimant were not arbitrary and neither was there any aggravating or exemplary damage.
- [34] Irrespective of Counsel's contention, I must give recognition to Faser J's view in ***Odane Edwards v The Attorney General*** 2013 JMSC Civ 16, that:

“If the basic award of damages has been adjusted to take account of aggravating factors, no separate award of aggravated damages should be made...”

[35] Throughout her entire evidence, the Claimant has indicated the embarrassment, humiliation and disgrace she felt resulting from her ill-fated encounter with the police officers that day. However, injured feelings aside, she has failed to present any evidence which in my view could be classified as oppressive.

[36] Therefore, my attention is once again drawn to the Odane Edwards case where Fraser J highlighted the view of Thomas LJ in ***Appleton and others v Garrett [1996] B I Q R P I***, thus;

“A court should not characterise the award of damages for injury to feelings, including any indignity, mental suffering, distress, humiliation or anger and indignation that might be caused by such an attack, as aggravated damages; a court should bring that element of compensatory damages for injured feelings into account as part of the general damages awarded. It was no longer appropriate to characterize the award for damages for injury to feelings as aggravated damages, expected possibly in a wholly exceptional case”

[37] In light of the aforesaid, I venture to say that those heads of damages (ie. aggravated, exemplary or vindicatory) are not applicable to the fact situation of the Claimant: compensation under the torts of false imprisonment and malicious prosecution can avail her.

[38] Therefore, special damages is awarded in the sum of \$359,000 with interest of 3% from the date of the accident to the date of the Judgment.

General damages is awarded in the sum \$845,000 with interest of 3% from the date of service of the Claim Form to the date of Judgment.

Cost to the Claimant to be agreed to taxed.