

CLAIM No. 2011 HCV 08063

BETWEEN WINSTON THOMAS

CLAIMANT

AND ATTORNEY GENERAL OF JAMAICA

DEFENDANT

Mr. Charles Campbell for the Claimants.

Ms. Marlene Chisholm instructed by the Director of State Proceedings for the Defendant.

Heard: 20th July 2015 & 21st September, 2016

TORT, ASSESSMENT OF DAMAGES - FALSE IMPRISONMENT - MALICIOUS PROSECUTION, AGGRAVATED DAMAGES - EXEMPLARY DAMAGES - CLAIMANTS DETAINED IN LOCK UP AND NOT CHARGED APPLICABLE PRINCIPLES.

CORAM: BERTRAM LINTON, J (AG.)

Background

These cases are before the court for assessment of damages

[1] On or around July 2, 2010 the Claimants Jervis Blake, Simon Black, Troy Thomas, Sheldon Murray and Claudette Hamilton were at 'Motor Engines and Accessories Limited', the business place of their employer Winston Thomas. The business involved selling oil, lubricants, and used auto parts and also provided wrecker, trucking and crane services and is located in Saint Margaret's Bay in the parish of Portland.

[2] Claudette Hamilton gave evidence that on the said day at about 4:30pm several police men who she recognized as police officers from the Port Antonio Police Station drove into the premises and conducted a search. After the search Claudette Hamilton was handcuffed, placed in a police car and taken to the Port Antonio Police Station. The other Claimants Jervis Blake, Simon Black, Troy Thomas and Sheldon Murray were placed in a separate police vehicle and all

taken to the Port Antonio Police Station, approximately six miles away. On arrival the male workers were reportedly interviewed and taken to the jail cell.

- [3] Ms. Claudette Hamilton stated that she was questioned and placed in a grilled open area at the front of the police station. She spent several hours there and at 1:00am on July 3, 2010 she was escorted to the Castleton Police Station by police only, approximately 15 miles away. She was subsequently placed in a cell where she remained in the custody of the police at the Castleton Police Station until Tuesday the 6th of July, 2010. Ms. Hamilton said she started wheezing that night and had chest pains. She gave evidence that the cells were very dark and had a foul odour. She also complained of cockroaches and mosquitoes that bit her. At around 6:00pm on that day she was handcuffed to another female prisoner and taken to the Port Antonio Police Station where she was interviewed by a Detective Auvin Reid. Ms. Hamilton was later released at about 7:30 pm on the night of July 6, 2010 without any charges being laid against her.
- [4] The other four Claimants namely Jervis Blake, Simon Black, Troy Thomas and Sheldon Murray were also taken into custody on the 2nd day of July 2010 and released on July 5, 2010 without any charges being laid against them. These four men complained of the cells being dark, a foul odour and mosquitoes which bit them along with cockroaches.
- [5] Mr. Blake also stated that his two goats were missing when he checked for them on the 6th of July 2010 and the value of them amounted to \$15,000.
- [6] Mr. Winston Thomas was the owner of Motor Engines and Accessories Limited. He said that on July 2, 2010 while travelling to Highgate at approximately 10:00am he received a telephone call from a Mr. Afflick from the Port Antonio Police Station who said that he should report to the Station as he had no license to sell oil.

[7] On Saturday July 3, 2010 Mr. Winston Thomas went to the Port Antonio Police Station to the C.I.B. office with his license. Mr. Winston Thomas gave evidence that a Detective Sergeant Reid did not seem interested in this and brushed the licence aside. Mr. Winston Thomas was subsequently hand cuffed with his hands behind him by a police officer by the name of Sheldon Murray at approximately 8am and placed in a cell. At approximately 3pm that same day, the officer Sheldon Murray removed Mr. Winston Thomas from the cell and placed him in handcuffs once again, took him outside where he was told to enter the police pick up. Mr. Winston Thomas stated that he was unable to enter the vehicle due to his hands being bound and the height of the vehicle and he said that he was pushed by Mr. Sheldon Murray (the Police officer) and he fell on his stomach and subsequently hit his head on the door of the vehicle. Several onlookers watched the encounter. Mr. Winston Thomas was taken to his business place where the keys were taken from his pockets and the officers opened the premises. At least ten police officers were there. He said that damage done to his business property, some of which included smashing of the louver blades and concrete sections of the door jam was hit out. He gave evidence that the Police officers took containers of oil and lubricants, power saws and lawn mowers. Mr. Winston Thomas also said there were many onlookers and he was humiliated as some murmured disturbing remarks when they saw him in the police custody and the handcuffs. Mr. Thomas also made reference to the cell where he was held being dark and the mosquitoes and cockroaches which bit him day and night.

[8] He remained locked up until Tuesday July 6th, 2010. He was charged for Breaches of the Petroleum Act and offered bail of \$100,000.00 with surety. He says that he lost monies both local and foreign currency as a chest in his bedroom was broken into during the search by the police. This money was never recovered.

[9] Mr. Sedley Gooden, the Rector of Saint Stephens Anglican Church in Saint Margaret's Bay gave evidence that he went to Mr. Winston Thomas property at

the time of the police raid and could attest to damage done on the property and the general state of disarray the premises was in.

Claimants' Submissions

- [10] Counsel for the Claimants made submissions in relation to the various parties and relied on several cases. Counsel looked at the time period each Claimant was in lock up. He submitted that Ms. Claudette Hamilton spent a little over 4 days (July 2- July 6th 2010), Jervis Blake, Simon Black, Troy Thomas, Sheldon Murray spent a little over 3 days (July 2-July 5 2010) and Winston Thomas 3 days (July 3-July 6 2010).
- [11] In relation to False Imprisonment counsel relied on the case of **John Crossfield v the Attorney General of Jamaica and Corporal Ethel Halliman SCCA No 132/2009**, which cited the cases of **Herwin Fearon v The Attorney general for Jamaica and Constable Brown Claim No. 1990/F-046**, **Delia Burke v Deputy Superintendent Carol McKenzie and the Attorney General of Jamaica Claim No. 2009 HCV 2885**, **Keith Nelson v Sergeant Gayle and the Attorney General of Jamaica Claim No. C.L. 1998/N-120** among other cases.
- [12] Counsel submitted that there were aggravated damages in relation to Ms. Claudette Hamilton and Mr. Winston Thomas and he relied on the principles in **Rookes v Barnard (1964) AC 1129** in support of this point.
- [13] He also submitted that for false imprisonment of Jervis Blake, Simon Black, Troy Thomas, Sheldon Murray the award should be in similar terms to the **Herwin Fearon v Attorney General for Jamaica and Constable Brown** case and suggested an award of \$760,000 under this head.
- [14] In consideration of Ms Claudette Hamilton circumstances where she was in lock up for 4 days Counsel submitted an award based on the case of **John Crossfield v the Attorney General of Jamaica and Corporal Ethel Halliman** and that an award of \$950,000.00 should be made under the head of false

imprisonment for her. He suggested that an award of \$200,000-\$300,000 for aggravated damages for Ms. Hamilton would be a fair sum.

- [15] Counsel further submitted that for Mr. Winston Thomas who spent a total of 3 days in custody an award in light of the **Keith Nelson** case which updates to \$858,000 - \$900,000.00 under the head of Malicious Prosecution is reasonable. He further submitted an award of \$200,000 - 300,000 be made for aggravated damages and \$300,000 for Exemplary Damages.

Summary of Claimants submitted awards

False Imprisonment

Jervis Blake, Simon Black, Troy Thomas, Sheldon Murray-	\$760,000.00
Claudette Hamilton-	\$950,000.00
Winston Thomas-	\$858,000.00

Malicious Prosecution

Winston Thomas	\$900,000.00
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Aggravated Damages

Claudette Hamilton	\$200,000.00 - \$300,000.00
Winston Hamilton	\$200,000.00 - \$300,000.00

Exemplary Damages

Winston Thomas	\$300,000.00
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Special Damages

Winston Thomas	\$645,000.00
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Defendant's Submission

- [16] Counsel Ms. Chisholm for the Defendant cited from McGregor on Damages, she relied on the case of **John Crossfield**. She also cited the decisions and awards in **Delia Burke** case, **Nelson Ferron Case**, **John Gaynor v Cable and Wireless Jamaica Ltd** and **Superintendent G.C. Grant and the Attorney General Suit No. C.L. 2000/G-124**.
- [17] Counsel submitted that an award for false imprisonment for Ms. Hamilton can be made similar to the updated award in the Keith Nelson's case as this is reasonable. She submitted the factors present in the case at bar is distinct from the Ferron's case, and suggested that there should be no award for aggravated damages for Ms. Hamilton as the award for general damages was enough and relied on the case of **Thompson v Commissioner of Police of the Metropolis (1997) 2 All ER** in this regard.
- [18] In relation to Jervis Blake, Simon Black, Troy Thomas and Sheldon Murray, Ms. Chisolm submitted that for false imprisonment a reasonable award would be in light of the John Gaynor case and \$290,000.00 would be a reasonable award.
- [19] In Winston Thomas' circumstances counsel submitted that the Ferron case was a useful guide for an award of false imprisonment and an award of \$758,265.00 is reasonable. An award of \$400,000 for aggravated damages was submitted for Mr. Winston Thomas and she suggested that there should not be any award for exemplary damages or special damages as these were not proved.
- [20] It was also submitted that by virtue of section 33 of the Constabulary Force Act, the Claimant has the burden of not only pleading but proving on a balance of probabilities that the tortious acts complained of by the Claimants were done maliciously or without probable cause.

Issues

- i) What quantum of damages that should be awarded to each Claimant under the head of False Imprisonment.
- ii) Should an award be granted under the head of Aggravated Damages for Ms Hamilton?
- iii) The third issue is whether Mr. Winston Thomas should be granted aggravated and exemplary Damages and what would be a reasonable award.
- iv) What would be a reasonable award for Malicious Prosecution of Mr. Winston Thomas

Analysis and Findings

False Imprisonment

[21] In the case of **Delia Burke v Deputy Superintendent Carol McKenzie and the Attorney General of Jamaica Claim No 2009 HCV 2885**, the issues were similar. The Claimant in the Delia Burke case was found to have been falsely imprisoned, embarrassed humiliated, and intimidated. Several cases was cited and relied on in the analysis carried out in that case and these are all noted.

[22] **Clerk & Lindsell on Torts** 14th Edition para 681 defines False Imprisonment as “complete deprivation of liberty for any time, however short, and without lawful cause”. In simple terms it is when ones liberty is taken away and he is detained against his will without legal justification.

[23] Harris JA in **Attorney General v Glenville Murphy (2010) JMCA Civ 50** said that

*“The burden is on the Claimant to prove that the police had no lawful justification for his arrest. However, if it is shown that the arrest was unjustifiable and the periods of detention unjustifiably lengthy, the onus shifts to the defendant to show whether in all circumstances, the period of detention was reasonable -see **Flemming v Det. Cpl. Myers and the Attorney General**”*

[24] In Jamaica section 33 of the Constabulary Force Act requires the Claimant to prove that the officer acted either maliciously or without probable cause.

[25] In the case of **Herwin Fearon**, Harris J said ;

“However, even if an initial detention is justifiable, the period of detention ought not to be unduly long. If the detention is found to be longer than justified then this could amount to unreasonable delay and consequently result in false imprisonment, as it would be demonstrative of absence of reasonable and probable cause”.

[26] She went on to question what is a reasonable time and cited the case of **Flemming v Myers and Attorney General (1989) 26 JLR, 525** where Morgan J stated that

“ it is clear that in determining the reasonableness of time that elapses, the circumstances of each case must be the guiding principle; and that any unreasonable delay in taking an imprisoned person before the Court will result in liability for false imprisonment”.

[27] I find that the detention of the Claimants Jervis Blake, Simon Black, Troy Thomas, Claudette Hamilton, Sheldon Murray and Winston Thomas, was unreasonable and without justification from the start and it continued in the face of the lack of any evidence as to their involvement in any criminal offence. The Claimants were held for a lengthy time period which was unjustified and the defendants failed to show that the period of detention was reasonable. Therefore the Claimants were falsely imprisoned and an award that is reasonable must be made to each Claimant based on their period of detention.

[28] In relation to Jervis Blake, Simon Black, Troy Thomas and Sheldon Murray who were in custody from July 2, 2010- July 5th 2010 a total of a little over 3 days were spent in lock ups. I cannot agree with Ms. Chisholm that an award be made

in relation to the case of **John Gaynor** as in that case Mr. Gaynor was lawfully arrested and the issue was that the arrest subsequently became unlawful by the unreasonable lengthy four days detention. In the case at bar the Claimants were never arrested as no charges were laid.

[29] The court finds that there was unreasonable delay in keeping the men at the police station for a little over three days without any charges being made against them. I find that an award of \$700,000.00 for each is reasonable this is the approximately updated value of the \$280,000 award for general damages in **Fearon's** case using the June CPI of 231

[30] It is my finding that an award for Ms. Hamilton who was detained from July 2, 2010- July 6, 2010 which amounts to a little over four days be in line with the case of **John Crossfield**. Both Mr. Crossfield and Ms. Hamilton were falsely imprisoned for a period of four days, placed in cells that were in terrible conditions as they were reported to be infested to cockroaches, mosquitoes and dark and cold. An award of \$600,000 was awarded to Mr. Crossfield which updates approximately \$950,000.00 using the June 2016 CPI of 231. I agree with counsel for the Defendant that an award in light of the **Fearon's** case is a more reasonable award under the head of false imprisonment for Mr. Winston Thomas. I do not think that Crossfield case where the detention was for a longer time period would be a representative value to the Claimant at bar. As such I find that an award for \$ 750,000.00 is to be awarded to Mr. Winston Thomas for false imprisonment.

Malicious Prosecution

[31] In McGregor on Damages Para 38-004 it sets the basis upon which a court will usually assess damages in relation to Malicious Prosecution. It states that
“ the principal head of damage here is to the fair fame of the Claimant, the injury to his reputation. In addition it would seem that he will recover for the injury to his feelings, i.e. for the indignity, humiliation and disgrace caused by the fact of the

charge being preferred against him...it therefore seems that the Claimant can recover in respect of the risk of conviction, this is basically injury to feelings.”

[32] Winston Thomas is the only Claimant seeking an award under this head of damages. It was submitted that Mr. Thomas was greatly humiliated by the incident. He gave evidence that he was pushed by the police officers when they told him to enter the police vehicle and he fell on his face in full view of the crowd that had gathered. He is diabetic and while in custody remained hungry for an inordinate length of time. As well as there was an instance where he was unable to assist himself to urinate as his hands were bound and there was no assistance rendered to him. He gave evidence of his feelings of disgrace brought on by this incident and as a result of the police officers' misconduct in their treatment of him. This he said was even more hurtful in the face of the fact that he has assisted the police force on numerous occasions without charge from the resources of his business.

[33] Brooks J in the case of **Keith Nelson** stated that in order to succeed in a case Malicious Prosecution the Claimant must prove on a balance of probabilities that

- 1) The law was set in motion against him on a charge for a criminal offence;
- 2) That he was acquitted of the charge or that otherwise it was determined in his favor;
- 3) That when the prosecutor set the law in motion he was actuated by malice or acted without reasonable or probable cause;
- 4) That he suffered damage as a result.

[34] There is no contest that Mr. Winston Thomas was charged with a criminal offence and that both charges were later dismissed. I find that the police officers acted with malice or without probable cause in the matter. Mr. Thomas gave evidence that when he went to the police station on the morning of July 3, 2010 and provided the license he was accused of not having, to Sergeant Reid he “brushed it aside”. Mr. Thomas later gave evidence, which is accepted by the

court that the same Sergeant Reid tried to bribe him to pay over monies to him for them to drop the case against him. I find that there was malice in the pursuit if the charges against the Claimant and gross misconduct on the part of the officer(s).

[35] An award is made under this head for Mr. Winston Thomas in light of the **Keith Nelson** case. Mr. Nelson was awarded \$400,000 which updates to \$ 890,000.00 approximately using June CPI of 231. I find that this award is appropriate in the circumstances of this case.

Aggravated damages

[36] Counsel for the Claimants submitted that an award under this head to Ms Hamilton start at \$200,000 and that Mr. Winston Thomas be awarded an amount of \$500,000 or upwards in line with **Delia Burke** or the **Maxwell Russell** case. Ms Chisholm submitted that there should not be an award to Ms Hamilton under this head and that for Mr. Winston Thomas \$400,000.00 in line with the case of **Thompson v Commissioner**.

[37] It is trite law that aggravated damages are compensatory in nature and are awarded to a Claimant for mental distress suffered as a result of the commission of a tort by the defendant.

[38] In my mind Ms. Hamilton suffered at the hands of the defendant. She suffered some degree of humiliation and injury to her feelings, reputation and to her health. She gave evidence that she was in the holding area for extensive hours and civilians who entered the police station saw her in handcuffs and made belittling comments to her. She further stated that she was later transported at around one am to another police station several miles away and that this was done in the cold night with no female officer present.

- [39]** She said that when she arrive at Castleton police station to which she was taken she “started wheezing and had chest pains” She spoke of being asthmatic and not getting her nebulizer until the following day. I find that these are aggravating features indeed, since these asthmatic symptoms are often brought on by stressful circumstances. What is even more surprising is that the symptoms she experienced are usually treated by most, if not all medical facilities as those which require emergency assistance. She was never taken to the doctor or a hospital and only supplied with her nebulizer the nest day.
- [40]** I find that an award of \$250,000 is reasonable in the circumstances of this case as the aggravating features present in the case at bar is distinct from the Delia Burke and Maxwell Russell cases where there were more serious aggravating features present.
- [41]** In Mr. Winston Thomas’ circumstances, I find that a similar award under this head should be made in the sum of \$500,000.00
- [42]** The police officer had refused to look at the License when Mr. Thomas displayed this to him, he was pushed, handcuffed in the presence of persons who reside in the Saint Margaret’s Bay area as well as other customers he had from Port Antonio. He was not given anything to eat and he was diabetic, persons laughed and jeared at him, he was also restrained to the point where he was unable to relieve himself when the need arose. Mr. Thomas was 69 years old and the time and he was handcuffed with his hands behind him which must have been a great discomfort for a man of his age. It is evident that he would have suffered injury to his feelings and felt embarrassed by the whole ordeal. He also gave evidence that his business and home life have suffered greatly and this is bound to have an ongoing effect on his mental and physical well being and livelihood.

Exemplary Damages

- [43] Counsel for Mr. Winston Thomas pleaded that an award be made under this head for him while counsel for the Defendants stated that there should not be an award for Exemplary damages as the awards made under the other heads would be sufficient to compensate Mr. Winston Thomas.
- [44] The house of Lords in **Rooks v Barnard (1964) AC 1169** at pages 1225-1227 laid down three categories of cases in which exemplary Damages may be awarded. I find that in the present case, the first category, that is, whether there is oppressive, arbitrary or unconstitutional action by the servants of the government is applicable for consideration. Mr. Thomas gave evidence which was supported by a Minister of religion and Justice of the Peace, Mr. Sedley Gooden, of the damage that the police officers did to his premises. Mr. Winston Thomas said his premises were vandalized by the officers, he stated that a locked chest was broken into, monies were removed, oils and lubricants were missing, his 5 dogs were missing as they were locked out by the police officers. It was also later revealed, and is evidence that I accept, that Sergeant Reid who was the arresting officer in charge of the case tried to obtain a bribe from Mr. Winston Thomas.
- [45] There are situations where exemplary damages are said to serve a useful purpose, this where it is necessary to deter the defendant from repeating the outrageously wrongful conduct as well as to show others that it is detrimental to act in a similar fashion. It is also a useful tool to convey the disapproval of the court and is punitive in nature.
- [46] I believe that the defendant acted in a high handed manner and I also accept that the claimant Winston Thomas was subjected to unnecessarily oppressive treatment and I so rule. In looking at this head of damages I am also mindful of the caution given in the cases of **Delia Burke, Attorney General v Noel**

Gravesandy and Broome v Cassells & Co. Ltd. [1972] 2 WLR and Rooks v Barnard where the court said:

- (i) The fact that the trial judge may find the conduct to be oppressive and arbitrary does not ipso facto lead to an award of exemplary damages. It is not in every case in which conduct is found to be willful or wanton that exemplary damages should be awarded.
- (ii) The court must first rule whether evidence exists which entitles a jury to find facts bringing the case into the category mentioned. This in itself does not give an entitlement to an award of exemplary damages.
- (iii) The judge must be careful to understand that no award should be made unless he is satisfied that the other headings under which awards have already been made sufficiently meets the need of the circumstances in terms of compensation.

[47] Taking all of that into consideration, I am of the view that the sums awarded before do not sufficiently cover the punitive and exemplary elements of the damages Mr. Winston Thomas suffered. I therefore award Mr. Winston Thomas the sum of \$250,000 .00 for Exemplary Damages.

Special Damages

[48] Mr. Winston Thomas claims special damages in the sum of \$645,000.00 which comprises of \$300,000 for legal fees and \$345,000 for thirty five-gallon containers that were filled with oil which each cost \$11,500.00. These were specifically pleaded and evidence in support of this was highlighted at the trial where there was a receipt of the legal fees and they was an advisory letter stating what the current price of oils were. I therefore find that this award is reasonable in the circumstances and the Claimant should recover for these.

[49] I cannot grant an award for the two goats that Mr. Jervis Blake stated he lost as a result of his imprisonment as these were not specifically pleaded and there was independent evidence of value.

Judgment is awarded to the Claimants as follows:

Special Damages

Winston Thomas **\$645,000.00**

General Damages

I) False Imprisonment
Claudette Hamilton **\$950,000.00**
Jervis Blake, Simon Black, Troy Thomas, Sheldon Murray **\$700,000.00**
Winston Thomas **\$750,000.00**

II) Malicious Prosecution
Winston Thomas **\$ 890,000.00**

III) Aggravated Damages
Claudette Hamilton **\$250,000.00**
Winston Thomas **\$500,000.00**

Not General Damages

IV) Exemplary Damages
Winston Thomas **\$250,000.00**

- Interest is awarded on General Damages from (date of service of Claim Form) 22nd December 2011 to the date of judgment at a rate of 6%.

- Interest on Special Damages 2nd July 2010 date of incident - 21st September 2016 date of judgment at a rate of 6%.