



[2014] JMSC Civ.174

IN THE SUPREME COURT OF JUDICATURE

THE CIVIL DIVISION

CLAIM NO. 2004 HCV 01290

BETWEEN	ILENE BROWN-SINCLAIR	CLAIMANT
AND	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

IN OPEN COURT

Miss Judith M. Clarke instructed by Judith M. Clarke & Co., Attorneys-at-Law for the Claimant.

Mr. Nigel B. Gayle and Mr. Dale Austin instructed by the Director of State Proceedings for the Defendant.

False Imprisonment – Malicious Prosecution – Assault – Trespass – Complainant and Claimant complain of Carnal Abuse – No attendance of Complainant at court proceedings – Claimant charged with Attempting to Pervert the Course of Justice – Claimant claims Damages – Exemplary Damages – Aggravated Damages – Claimant’s claim fails – No damages awarded.

Heard: 27th, 28th, 29th February 2012 & 31st October 2014.

CAMPBELL J.

Background

[1] In 2000, the Claimant’s, then fourteen (14) year-old daughter became pregnant. Up to the time of her pregnancy, the child had always resided with the Claimant and attended school in the community. The Claimant reported the matter to the Lucea police station. Thereafter, a Mr. Michael Griffiths was charged with the offence of Carnal Abuse of the daughter. The minor child was the complainant in the criminal proceedings brought against Mr. Griffiths. A preliminary inquiry was held and both the Claimant and her daughter attended and gave evidence.

- [2] Mr. Griffiths' trial was delayed by his absconding bail. The accused was not found until November 2003. During that period the complainant's daughter had achieved her majority. On the 25th February 2004, the police attended the Claimant's home in search of the complainant. There, the police served the Claimant with a subpoena and informed her that she was to attend the Hanover Circuit Court on the 27th February 2004. The matter appeared in court, on the 27th February 2004 and was adjourned to 1st March 2004 because the complainant did not attend court. That same day, a further visit was made by the police to the home of the Claimant. Later that day, the trial judge was informed that the complainant was hiding her daughter and that police officers had gone to the Claimant's home and saw the daughter running away. The Claimant was taken into custody by the police officers.
- [3] The Claimant was charged with the offence of attempting to pervert the course of justice. The Claimant was brought before the Resident Magistrate Court on 2nd March 2004 and was remanded until 4th March 2004, on which date she was granted bail. On her first attendance in court, Crown Counsel attended and offered no evidence against her.
- [4] On 2nd June 2004, the Claimant filed a claim seeking damages for false imprisonment, malicious prosecution, assault, trespass, exemplary damages and aggravated damages for injuries occasioned. It was alleged that the Crown's servants acted abusively, falsely, maliciously and without reasonable or probable cause; when the Claimant was taken into custody and charged for attempting to pervert the course of justice on 1st March 2004, and remained into custody until 4th March 2004.
- [5] The Defendant's defence is that on numerous occasions, the police went in search of the complainant. That the Claimant indicated to the said investigating officer that the complainant did not live with her anymore and that she was unaware of the complainant's whereabouts. However the inquiries made in the community revealed that the complainant lived with the Claimant at the time.
- [6] That on the 23rd February 2004, McIntosh J, issued a subpoena for the Claimant. The police party had proceeded to Woodchurch District to serve the subpoena on the Claimant, on the instructions of Crown Counsel. At paragraph 12 of the Defence, it was stated that;

"On approaching the Claimant's yard, Det. Constable Hibbert saw the complainant running to the back of the house. The

complainant failed to stop notwithstanding Detective Constable Hibbert went to the back of the house where she saw the Claimant.”

- [7] At paragraph 13, the Defendant further states that on 27th February 2004, the Claimant told the Hanover Circuit Court that she had not seen the complainant and is unaware of her whereabouts. The Hon. Mrs. Justice N. McIntosh then issued a warrant of first instance for the arrest of the complainant as based on information from the police and the Victim Support officer, Mrs. Chung, there was reason to believe that the complaint was still in the community.
- [8] The Defendant states that on 1st March 2004 when the Claimant attended the Hanover Circuit Court, Detective Corporal Andrea Sterling took her into custody on the instructions of the Hon. Mrs. Justice N. McIntosh on the reasonable suspicion of attempting to pervert the course of justice.
- [9] The Defendant further states that the Claimant was taken into custody after several unsuccessful efforts by the police to locate the complainant prior to and during the sitting of the Hanover Circuit Court and upon reasonable suspicion of the Claimant's role in frustrating the prosecution of the carnal abuse case by deliberately and willfully harbouring and/ or concealing the complainant and refusing to inform the police or the Circuit Court of the complainant's whereabouts.
- [10] The Claim Form alleges; *“certain members of the Island Special Constabulary and/ or Jamaica Constabulary Force and certain District Constables...in performance or purported performance of their duties as servants and/or agents of the crown...”* There was no issue that the acts complained of were done in the execution of their duties.

False Imprisonment

- [11] The learned authors of **Salmond on the Law of Torts**, Fifteenth Edition, page 100; defines the tort of false imprisonment as follows;

*“The wrong of false imprisonment consists in the act of arresting or imprisoning any person without lawful justification, or otherwise preventing him without lawful justification from exercising his right of leaving the place in which he is. “ See also the **Clerk and Lindsell on Torts** -*

14th Edn. it is the “complete deprivation of liberty for any time, however short without lawful cause.”

- [12] In the Defendant’s written submission, it was urged that, pursuant to Section 13, of the **Constabulary Force Act**, (hereinafter “the Act”) police officers are statutorily bound to;

“keep watch by day and night, to preserve the peace, to detect crime, apprehend or summon before a Justice, persons found committing any offence, or who may be charged with having committed any offence, to serve and to execute all summons, warrants, subpoenas, notices, and criminal processes issued from any Court of Criminal Justice or by any Justice in a criminal matter and to do and perform all the duties appertaining to the officer or Constable”.[**Emphasis provided**].

- [13] In order to ground a claim, against an officer for any act done by him in the execution of his duties, the mandates of **Section 33 of the Act**, state that it shall be expressly alleged, “*that such act was done either maliciously or without reasonable or probable cause.*” If the Claimant fails to prove this allegation, she will be non-suited or a verdict given to the Defendant.

- [14] There is no issue joined between the parties, that the police officers were acting other than in the execution of their office, or in the course of their duty. The issue is; were the actions complained of, legally justified?

- [15] **Section 33 of the Act** requires that Mrs. Brown-Sinclair, prove that the officer acted either maliciously or without reasonable or probable cause. The Claimant’s testimony is that she was unaware of the whereabouts of her teenage daughter. That she made no inquires as to her location. I accept that Detective Constable Hibbert, has known her daughter, and had in fact seen the daughter hurry to the back, on the approach of the police car. I accept the evidence of District Constable Grayson, that she had seen the mother and daughter on the 24th February 2004, at the Riversdale High School sports day. I accept the evidence that the reports the police gleaned from the community was that the complainant was still living with her mother.

- [16] I reject the Claimant’s challenge to District Constable Grayson’s evidence that it was born out of malice towards the Claimant due to an incident that had occurred

some two decades before. I find that Detective Constable Hibbert would have been able to see the person on the verandah, from the roadway. The prosecutor has not got to believe in the probability of the conviction. The prosecutor has not got to test the strength of the defence. He is concerned only with the question of, whether there is a case fit to be tried.

[17] Although an arrest may originally be justifiable, it may become wrongful if the imprisonment is unreasonable. If the detention is longer than justified then it could amount to unreasonable delay and consequently result in false imprisonment, as it could be deemed to be demonstrative of the absence of reasonable or probable cause.

[18] In the case of **Peter Flemming v Myers and The Attorney General**, (1989) 26 JLR 525, Morgan JA, 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.”

[19] On 1st March 2004, certain instructions were issued by the prosecutor to the court’s Detective. As a result of which the Claimant was taken into custody, at about 4.30 pm, on reasonable suspicion for the offence of attempting to pervert the course of justice. She was brought before the court the next day (See; *paragraph 31 of the witness statement of Ilene Brown-Sinclair*). That was at the close of the court’s session. The Judge refused her bail application on the 2nd March 2004 and she was further remanded to appear on the 4th March 2004. On March 3rd 2004, at 10.00 am she was arrested and charged with the offence of attempting to pervert the course of justice. The period of her detention would therefore be from 4:30 pm to 10:00 am the following morning. In all the circumstances, where the officer received directions and had an obligation to make an independent determination that period could not have been unreasonable.

Malicious Prosecution

[20] To succeed the Claimant, must prove on a balance of probabilities;

1. That the law was set in motion against her on a charge for a criminal offence;

2. That she was acquitted of the charge or otherwise it was determined in her favour;
3. That where the prosecutor (in this case, Detective Corporal Sterling) set the law in motion she was actuated by malice or acted without reasonable or probable cause; and
4. That she suffered damages as a result (See; also **Wilks v Voisin** (1963) 5 WIR 50 at pg 57.

[21] There is no dispute in relation to the Claimant satisfying numbers 1 and 2 of the aforementioned requisites. She must prove that the prosecution was born out of malice and was initiated without reasonable or probable cause. Malice is not restricted, in this context, to “spite and ill-will”, but may include motives other than a desire to bring a criminal to justice. The Claimant must prove on a balance of probabilities that the Defendant did not have an honest belief in the guilt of the Claimant. The Claimant must prove that the Defendant was motivated by “*hate, animosity, rancor, or malevolence in prosecuting him.*”

[22] Is there evidence of any such motive? Detective Corporal Sterling is the person who took the Claimant into custody. Did Detective Corporal Sterling entertain an honest belief in the guilt of the accused? Detective Corporal Sterling testified that she took the Claimant into custody upon the direction of the Prosecutor and the order of the learned Judge.

[23] Sterling had the opportunity, however, to apply her independent mind, to the state of circumstances, of which she had knowledge. She had undertaken to locate the virtual complainant in the carnal abuse matter. She was a member of the party that went to the home of the Claimant at Woodchurch District on the 25th February 2004 to serve a subpoena on the Claimant. She had introduced herself to the Claimant, and asked her for the whereabouts of her daughter, to which the Claimant had replied that she was unaware of her daughter’s whereabouts.

[24] According to Detective Corporal Sterling, the Claimant had welcomed them onto her property. She had made inquiries of the community members as to the whereabouts of the complainant, and had been told that the complainant was seen in the community a few days before and in the company of her mother. She was also privy to the reports from the other members of the police party to the same effect.

[25] She would have been present in court, a few days later, and heard the Claimant deny to the court any knowledge of the her daughter's whereabouts. In an effort to execute a warrant issued by the court for the complainant, she returned to the home of the Claimant. By the acts of venturing to the Claimant's home to execute the warrant on her daughter, it can be inferred that Detective Corporal Sterling honestly thought, the Claimant's daughter could be found there despite the denials of the Claimant. According to Detective Corporal Sterling, she saw a young lady fleeing from the back of the house into the bushes, and gave chase. She heard her colleague, called the name of the virtual complainant as she gave chase.

[26] Did Detective Corporal Sterling as arresting officer, honestly believe that the Claimant by making her daughter unavailable was attempting to pervert the course of justice? Lord Diplock, explains the requirement of reasonable and probable cause along the following lines;

“Where a felony has been committed, a person whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts which he himself knows or of which he has been credibly informed at the time of the arrest makes it probable that the person arrested committed the felony. This is what constitutes in law a reasonable and probable cause.”

[27] See also, **O'Hara v Chief Constable** (1997) 1 All E. R. 129, where, it was held, that the mere fact that an arresting officer has been instructed by a superior officer, or some other person, is not capable of amounting to reasonable grounds for the requisite suspicion that a particular act required. Here the officer was not merely acting on the directions of the crown counsel and the learned judge, but had provided herself with ample opportunity to make an independent determination. There can be no suggestions that the officer was prevented from applying an independent mind, as in the case of **Martin v Watson** (1996) 1 AC 74. The Claimant has not proved that Detective Corporal Sterling was actuated by malice or acted with any other motive other than to bring an offender before the court.

Assault

[28] The claim for assault hinges on the operation carried out at the Claimant's home on the morning of 1st March 2004. The complaint was that guns were pointed at

the Claimant and flashlights shone in the faces of the occupants of the house. The Claimant complained that she was fearful that the police officers would shoot her. I prefer the evidence of Detective Corporal Anderson as to what transpired there. I accept that the house was lit with electric lights and there was no need to use flashlights. That the officers were familiar with the house and its occupants, because they had been there before. Hence; there would have been no need for the force of arms. I accept the evidence of the Defendant that the operation was considered low-risk, as they were going for a child. I accept that no firearms or flashlights were pointed at the Claimant. The claim for trespass to land similarly fails.

[29] In the circumstances and considering all that was placed before this court, the court makes the following orders;

1. The claim for damages for false imprisonment, malicious prosecution, assault, or trespass, exemplary damages and aggravated damages fails.
2. Costs to the Defendant to be agreed or taxed.