



[2017]JMSC Civ. 64

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2011 HCV 00104

BETWEEN	FITZGERALD CLARKE	CLAIMANT
AND	THE ATTORNEY GENERAL FOR JAMAICA	1st DEFENDANT
AND	THE COMMISSIONER OF POLICE	2nd DEFENDANT
AND	CECIL ROBINSON	3rd DEFENDANT

IN OPEN COURT

Kimberly Facey instructed by Page &Haisley Attorneys at Law for the Claimant

Christine McNeil and Carrie-Ann Freckleton-Cousins instructed by Director of State Proceedings for the Defendants

Heard: 13th – 14th March, 2017 Delivered: 4th May, 2017

Assessment of Damages– Malicious Prosecution – False Imprisonment – Aggravated and Exemplary Damages – Considerations when deciding whether liability to attach

BERTRAM LINTON, J

BACKGROUND

[1] Fitzgerald Clarke, the claimant in this case, is related by marriage to the 3rd defendant. Mr. Clark’s deceased wife would have called him uncle. The Clarkes have two children and when Mrs. Clarke died in 2004, her aunt the 3rd defendant’s wife, Mrs. Robinson assumed care and control of the children with the concurrence of their father the claimant. The 3rd Defendant is a police officer.

[2] On the 10th of January, 2005, the claimant visited Davis Hardware, Mrs. Robinson's work place, in order to enquire of the whereabouts of his children who were at that time staying at his home. During the discourse at the hardware, an altercation developed between the 3rd defendant and the claimant which resulted in the claimant being chased onto Molynes Road by the 3rd defendant and later being charged for the offences of using indecent language, resisting arrest and assaulting a police officer.

[3] The specific results of the trial of the criminal charges are unclear, but it appears that the claimant was not convicted and after a special investigation was conducted into the actions taken by Mr. Robinson, the Director of Public Prosecutions advised that:

"...no criminal or departmental action be taken against Constable Cecil Robinson.

I however recommend that all parties involved receive counselling."

[4] The claimant later saw a doctor for the injuries he sustained and filed a claim in January 2011. He seeks damages for false imprisonment, malicious prosecution, assault and battery, and aggravated and exemplary damages as he alleges that the 3rd defendant's actions were actuated by malice and there was no reasonable basis in law for his actions on the day of the incident.

THE SUBMISSIONS

A. *The Claimant's Submissions*

[5] The Claimant says that on the day in question, he went to the hardware to ask Mrs. Robinson about the whereabouts of his children as they were not at school when he went to pick them up and he assumed that they would have been with her. At some point during his visit to the hardware, Mr Robinson, the 3rd defendant came on the scene and called his wife to speak with the claimant. When Mrs. Robinson came outside, the claimant says Mr. Robinson became aggressive, assaulted Mr. Clarke and as a result a struggle ensued. Mr. Clarke

further says that he had to run away and while doing so, Mr. Robinson fired shots at him which missed. He was later detained and says that despite telling the officers at the Half Way Tree Police Station what had transpired, he was taken into custody and charged.

(i) False Imprisonment

[6] The Claimant submits that the court should have regard to the provisions in the constitution, particularly section 16 which speaks to the fact that no one should be deprived of freedom of movement.

[7] He says that he was unlawfully detained and he should be compensated for 4 hours detention. As such, the court is being asked to consider the cases of **Gary Hemans v the Attorney General [2013] JMSC Civ. 75** as well as **Fabian Gordon v Attorney General Claim No. 2007 HCV 02436 delivered 24. September. 2009**. He also contends that he was injured and denied medical assistance contrary to the provisions of section 50(h)(6) of the Constabulary Force Act.

[8] In the circumstances, a reasonable award should be \$300,000.00.

(ii) Malicious Prosecution

[9] The Claimant submits that the court should look at the elements required to prove malicious prosecution as outlined in the case of **Keith Nelson v Sergeant Gayle and the Attorney General of Jamaica Claim No. C.L 1998/N-20 delivered 20. April. 2007**. He says that the defendant acted with malice and without reasonable or probable cause.

[10] In that regard, the claimant says that based on the turbulent family history between himself and the Robinsons, it is no surprise that Mr. Robinson acted with hostility towards him. Counsel on behalf of the Claimant says that Mr. Robinson was abusing his authority, given that he had the option to issue a summons for the offence of using indecent language but instead chose to arrest

Mr. Clarke, because the law gave him the power to arrest for that offence. She further contends that Mr. Robinson did not have an honest belief in Mr. Clarke's guilt and this she says is supported by the fact that Mr. Clarke was not found guilty of the charges laid against him.

[11] In the circumstances, she submits that a reasonable sum under this head of damages would be \$800,000.00.

(iii) Assault and Battery

[12] The Claimant contends that the actions of Mr. Robinson were excessive and amounted to assault and battery. The medical report of Dr. Christopher Munroe dated 13th of January, 2005 discloses the doctor observing:

(a) Massive swelling to the right side of his face

(b) Swelling to the upper lip

(c) Clear fluid oozing from his left ear

(d) 2x2 haematoma on the right shoulder

(e) bruises to the left elbow

The claimant has asked the court to consider the fact that no evidence was given to counter the contents of the medical report.

[13] Further, it is contended that the evidence presented in the Ballistics report supports the claimant's argument that he was shot at three times while being chased by Mr. Robinson. When combined with the use of his baton, the claimant says Mr. Robinson's actions went over and above what was necessary under the circumstances

[14] Therefore, a reasonable sum of \$1,000,000.00 should be awarded under this head.

(iv) Aggravated and Exemplary Damages

[15] The Claimant submits that aggravating features are present in the case at bar as Mr. Robinson chose not to issue a summons but to arrest him because he wanted to humiliate him. In the circumstances, a sum of 1,200,000.00 should be awarded for aggravated damages.

[16] As it related to exemplary damages, it was submitted that Mr. Robinson has abused the public's trust and ought to be punished for '*dealing with a family member in the way he did.*' In the circumstances, \$400,000.00 ought to be awarded for exemplary damages.

(v) Special Damages

[17] No submissions were made on special damages, however the claimant has asked that the court grant him \$15,000.00 as transportation cost as outlined in the Particulars of Claim. Also, during trial, receipts were tendered in relation to fees for Dr. Babolal, Apex Medical and York Pharmacy. These total a sum of \$8,339.43

B. *The Defendants' Submissions*

[18] Mr. Robinson says that on the day in question he went to visit his wife at the hardware, as was customary. When he arrived, Mr. Clarke was there asking to see her and behaving in a boisterous manner and knocking angrily on the counter. This was having a disruptive effect on the business as Mrs. Robinson was employed there and there were several customers at the establishment. Despite the fact that Mr. Clarke knew him to be a police officer, Mr. Robinson identified himself to all present and attempted to intervene in the now escalating situation. He requested his wife to come and speak to Mr. Clarke. When she did so, claimant continued to behave in a boisterous manner. He verbally assaulted the Robinsons and engaged in the use of indecent language. As a result, Mr. Robinson made an effort to arrest and charge him for the use of indecent

language. Mr. Clarke became even more hostile and resisted arrest. A physical altercation developed and Mr. Robinson was forced to use his baton to subdue Mr. Clarke. However, Mr. Clarke ran away and Mr. Robinson had to chase him before being able to arrest him. Based on the circumstances, the defendants contend that Mr. Robinson acted lawfully and used only the amount of force that was necessary in the circumstances. Therefore, they do not believe Mr. Clarke is entitled to the compensation for the damages he claims. Still, submissions were proffered under each head should the court determine otherwise.

(i) False Imprisonment

[19] The defendants say that in order to properly assess damages for false imprisonment, the court ought to have regard to comparable cases. As a result, they have asked the court to consider the cases of ***Kerron Campbell v Kenroy Watson and the Attorney General for Jamaica*** Claim No. CLC 385/1998 delivered 6. January. 2005 and ***Fabian Gordon v The Attorney General for Jamaica and Constable Sean Johnson*** Claim No. 2007 HCV 02436 delivered 24. September. 2009 .

[20] They submit that the claimant's allegation that he was detained for 24 hours is misleading as based on his own documentary evidence he went to the doctor on the same day he was arrested and filled his prescription accordingly. In the circumstances, if Mr. Clarke is to be compensated, the defendants have asked that the court only compensate him for unlawful detention for 4 hours and not 24 hours as he is alleging ,if at all

[21] They submit that an award of \$150,000.00 would be reasonable compensation for the 4 hours he was detained.

(ii) Malicious Prosecution

[22] Reliance was placed on the ***Keith Nelson*** case to indicate the material factors which the court should consider when assessing damages for Malicious

Prosecution. The defence says that the Claimant's prosecution only lasted for 4 months and that the charges were relatively minor. Additionally, they say that the claimant has not presented any evidence to suggest that his reputation or status was affected by the proceedings.

[23] Nevertheless, a nominal award of \$90,000.00 would be appropriate if any award was to be made at all.

(iii) Assault and Battery

[24] The Defendants have asked the court to consider the cases of ***Paula Yee v Leroy Grant and Another*** Claim No. 1985/YO 11 delivered and ***Hazel Carty v Deward Singh and Others*** Claim No. 1989/C124.

[25] They say that the claimant's injuries are far less severe than the cases above and in the circumstances, if the Defendant is found liable then the claimant should only be entitled to \$150,000.00.

(iv) Aggravated and Exemplary Damages

[26] The defendants submit that there were no factors which warrant an award for exemplary damages. As such, no award should be made. In relation to aggravated damages, reliance was placed on the cases of ***Walton Richards v Woman Detective Corporal Campbell and the Attorney General*** Claim No. SCCLR-019/1996 delivered 19. February. 2009 and ***Everton Foster v the Attorney General and Anthony Malcom*** Claim No. CL5-135/1997 delivered 18th July. 2003.

[27] They submit that based on the circumstances presented, the claimant is not entitled to aggravated damages as there were no aggravating characteristics which would necessitate an award. However, if the court finds that there is any liability, the claimant is only entitled to the sum of \$100,000.00 under this head.

(v) Special Damages

[28] The Defendants submit that special damages ought to be specifically proven. Based on their assessment of the Claimant's alleged loss, they says that if he is to be compensated under this head, it should be limited to the medical receipts presented totally \$8,339.43 as well as \$5,000.00 for transportation costs which totals \$13,339.43.

THE ISSUES

[29] The issues which arise are:

- (a) Whether the claimant has established a case of false imprisonment; malicious prosecution and assault.
- (b) Whether there was justification for the claimant's apprehension, detention and prosecution; and
- (c) If the above two have been satisfied by the claimant, what damages are to be awarded if any.

ANALYSIS

[30] The court is grateful to the parties for their detailed submissions and the lists of authorities that have been cited. These have been very helpful and have been examined in detail in the court's assessment of the case at bar. I do not find it necessary to go through them all in detail but will have regard to them during the course of my judgment as they become necessary to explain the reasoning in relation to the decision arrived at.

[31] I have noted that in determining liability for the each claim made by Mr. Clarke, much of its outcome will rest on the credibility of the witnesses. The maxim that *'he who asserts must prove'* becomes relevant. As such, it is for Mr. Clarke to put sufficient evidence before the court so that it can be weighed on a balance of probabilities. Therefore, one of the first things the court will do is decide which set of facts is to be believed.

[32] The Claimant has asked to court to believe him when he says that he went to Davis Hardware and in a calm manner made the inquiry and that Mr. Robinson grabbed him and started to hit him all over his body for no reason but based on past family issues. He says that he had to run for his life since the defendant chased him, shot at him, eventually arrested him and in his Particulars of Claim he says that he was detained for 24 hours. Later, while at the lockup, he was not allowed to receive medical attention. The matter was resolved in his favour. In his evidence from the witness box, it turns out that he was not detained for 24 hours as alleged based on his own documentary evidence.

[33] The Defendant, on the other hand, contends that Mr. Clarke was behaving very badly; cursing expletives and banging his hands on the counter. As a result, he pointed out the offence of using indecent language and attempted to arrest him and Mr. Clarke *'boxed off his hands'* when he tried to take hold of him. He says that based on Mr. Clarke's behaviour, he retrieved his baton from his vehicle and used it to subdue Mr. Clarke. Mr. Clarke fled and was later caught on Molyne's Road and taken to the Half way tree police station where he was granted station bail in his own surety in order for him to seek medical attention. He denies shooting at Mr. Clarke and agrees that an altercation ensued between the two but says no excessive force was used.

[34] On a balance of probabilities, I find that the claimant is not a credible witness for the following reasons:

(a) I had the opportunity to observe the claimant while he was giving his evidence. He was very erratic and hostile when being asked simple questions by Counsel and his story did not seem logical. He is asking the court to believe him when he says he was not upset nor was he behaving in a hostile manner and cursing expletives at the Robinsons when he went to Davis Hardware that day. He has given no reason or explanation to the court as to the past disagreements and why Mr. Robinson would be hostile to him. He admitted that he went to Davis hardware because he

thought that the Robinsons had his children and were withholding information as to their whereabouts from him and in this context it is more believable that he was extremely upset and acting in keeping with that. I therefore do not believe he merely went to ask for his children as he says in a calm manner. It is more likely that he was upset and that his behaviour was in keeping with that upset, and that he was causing a disruptive presence in the business place, which is a public commercial entity serving members of the public and Mrs. Robinson's place of employment

(b) He says that Mr. Robinson began hitting him with his gun and baton for no reason and that when the officer attacked him, he did not retaliate or defend himself in any way. This is not in keeping with the personality/demeanour of the claimant that was seen in court or with the circumstances which were unfolding in Davis hardware that day.

[35] On the other hand, I find that the 3rd Defendant, Mr. Robinson and the account he gave is more believable for the following reasons:

(a) Mr. Robinson did not deny that he used the baton to subdue Mr. Clarke but says that he used only enough force as was required under the circumstances. Furthermore, I believe Mr. Robinson when he says that he pointed out the offence of using indecent language and the claimant attacked him. Undoubtedly a physical altercation ensued and this would seem to be what would have accounted for the injuries to Mr. Clarke. I must point out that emphasis was placed on whether Mr. Clarke was made aware of the offences for which he was eventually charged. However, the offences of resisting arrest and assaulting a police officer would have only arisen when Mr. Clarke began to retaliate and fled from Mr. Robinson. As such, the fact that Mr. Clarke was charged when brought to the police station is not unusual under the circumstances as

these last two offences would only have been added as relevant upon his arrest at the station.

(b) Mr. Robinson's version of events best describes what would have been the claimant's mannerism and best outlines how he would have behaved in the circumstances. I find that based on Mr. Clarke's demeanour in court and at the events as described, Mr. Robinson's description of the claimant's behaviour is more believable. As such, I accept that Mr. Clarke was behaving in a hostile manner and cursing when he went into the Hardware on the day in question.

[36] As such, based on the find that Mr. Clarke was behaving in a hostile manner it is reasonable then to presume that Mr. Robinson, in his capacity as a police officer, would have had every reason to step in and seek to control the situation in the way that he did.

(1) False imprisonment

[37] ***Clerk & Lindsell on Torts*** 14th Edition para 681 defines False Imprisonment as a "complete deprivation of liberty for any time, however short, and without lawful cause". In other words, it is when ones liberty is taken away against his will and without legal justification.

[38] Hawkins J in ***Hicks v Faulkner*** [1881] *ALLER* 187 stated that:

"...there being this recognised distinction between the two actions, that in false imprisonment the onus lies upon the defendant to plead and prove affirmatively the existence of reasonable cause as his justification; whereas in an action for malicious prosecution the plaintiff must allege and prove affirmatively its non-existence."

[39] In the case of ***Herwin Fearon v The Attorney General for Jamaica and Constable Brown*** Claim No. CL 1990/F-046 heard March 31, 2005, 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”.

She went on to question what a reasonable time is 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”.

[40] Based on the circumstances of the case at bar, I find that Mr. Clarke was not unlawfully detained. Further, as Counsel of the defendants aptly points out, based on the time stamps on the receipts the claimant has tendered into evidence, he could not have been detained for more than 4 hours.

[41] It is the defendant’s evidence that Mr. Clarke was given station bail in his own surety so that he could seek medical attention. Therefore, the suggestion that Mr. Clarke was denied prompt medical assistance is unfounded. In any event, based on his behaviour at the Hardware and his subsequent flight, there was reasonable justification for his arrest and detention and the period for which he was detained was quite reasonable.

[42] In the circumstances, I will make no award for false imprisonment.

(2) Malicious Prosecution

[43] In ***Keith Nelson v Sergeant Gayle and The Attorney General of Jamaica***, Brooks J (as he then was) found that in order to be successful in an action for malicious prosecution the claimant must prove:

- 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;*
- iv. *That he suffered damage as a result.*

[44] In ***Glinski v Mclver*** [1962] 2 WLR 832 Lord Devlin made it clear that in order to succeed on a claim for malicious prosecution:

"...the plaintiff must prove both that the defendant was actuated by malice and that he had no reasonable and probable cause for prosecuting..."

[45] In any event, section 33 of the Constabulary Force Act provides that:

"Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause: and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant."

[46] Reasonable and probable cause was defined by Devlin LJ in ***Hicks v Faulkner*** (1978) 8 QBD 167. At page 171, he said:

"...I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed..."

[47] It is clear that the claimant has clearly proven items (i) and (ii) of Brooks J (as he then was) quote in ***Keith Nelson***. However, he must also prove that the prosecutor acted with malice or without reasonable and probable cause and that he suffered loss.

[48] As it relates to acting with Malice or without probable cause, I find that Mr. Robinson did not act with malice and indeed had cause to lay charges against Mr. Clarke. I agree with Mr. Robinson when he says that Mr. Clarke was using expletives and his behaviour would warrant any officer to arrest him instead of issuing a summons since the situation required immediate action having regard to hostility in the business place. Further, it is Mr. Clarke's own evidence that he ran away from Mr. Robinson and I find this piece of evidence material to the

offence of resisting arrest. It is because Mr. Clarke was resisting arrest that an altercation began between the two and I believe Mr. Robinson when he says that Mr. Clarke assaulted him. Therefore, Mr. Robinson would have probable cause and reason to arrest and charge Mr. Clarke for use of indecent language, resisting arrest and assaulting a police officer.

[49] Malicious Prosecution is such that in order to succeed one must prove all the elements. Based on the fact that Mr. Clarke has failed to prove two of four elements, his claim must fail. Therefore, no award will be made for Malicious Prosecution.

(3) Assault and Battery

[50] In *Letang v Cooper* 1965 1 QB 232, Lord Denning said that:

“If one man intentionally applies force directly to another, the plaintiff has a cause of action in assault and battery, or if you please to describe it, in trespass to the person. “The least touching of another in anger is battery,” per Holt CJ in Cole v Turner. If he does not inflict injury intentionally, but only unintentionally, the plaintiff has no cause of action today in trespass. His only cause of action is in negligence, and then only on proof of want of reasonable care. If the plaintiff cannot prove want of reasonable care, he may have no cause of action at all. Thus, it is not enough nowadays for the plaintiff to plead that “the defendant shot the plaintiff”. He must also allege that he did it intentionally or negligently. If intentional, it is the tort of assault and battery. If negligent and causing damage, it is the tort of negligence.”

[51] It is to be noted that Appendix 17 of the Jamaica Constabulary Force Human Rights and Police use of force and Firearms Policy provides that:

“It is the policy of the JCF that its members shall use only that amount of force that is strictly necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control.”

[52] It therefore stands to reason that while the claimant must show intentional application of force to his person, there is the possibility for the defendant to justify his actions through the use of reasonable force. What is clear from the case at bar is that Mr. Robinson by his own admission used force to subdue Mr. Clarke and control the situation.

[53] In order to determine whether or not Mr. Clarke was assaulted and battered, it is necessary to consider the evidence. To determine whether or not Mr. Clarke should be awarded damages requires the court to evaluate the evidence surrounding this particular claim. Since I have found Mr. Clarke to be an unreliable witness, his account that Mr. Robinson fired shots at him cannot be trusted. I do not find that the ballistics report puts the Claimant's case any further or even in the least supports his supposition that he was shot at. The ballistics report says:

"Examination and test conducted on 'Exhibit A' revealed that it was fired and could be on or before the 10th January, 2005."

[54] Based on my interpretation of the report, there is no evidence that Mr. Robinson fired his gun on that particular day. Notably, Mr. Robinson's hands were not swabbed because it would have been an act in futility having regard to the time at which the complaint was made against him. As such, I find that there is no evidence that Mr. Robinson shot at Mr. Clarke.

[55] As it relates to the injuries Mr. Clark sustained, much will turn on whether Mr. Robinson's acts in trying to subdue Mr. Clarke were reasonable under the circumstances. Based on Mr. Robinson's evidence, which I have accepted, Mr. Clarke was boisterous and hostile. Mr. Robinson also said in his evidence that:

"I was fearful because I was alone and I couldn't allow him to overcome me. I used necessary force to get him under control."

He also says that he used the baton to hit Mr. Clarke in order to control him. Therefore, the court can reasonably find that the injuries Mr. Clarke sustained on the day in question were directly related to the altercation he had with Mr. Robinson.

[56] Based on the medical report of Dr. Christopher Munroe, Mr. Clarke's wounds were not severe and consisted of swelling to the face and lip, haematoma on the shoulder and bruises on his elbow. These injuries would seem to be consistent with the altercation. I find that these injuries are not reflective of Mr. Robinson

using excessive force to subdue Mr. Clarke. Notably, these injuries are reflective of the fact that Mr. Clarke was indeed fighting back as his injuries are considerably minimal compared to what should have been the result based on his account of offering no defence when Mr. Robinson was apprehending him. Therefore, I find that Mr. Robinson used enough force as prescribed by the law to detain Mr. Clarke who I find was hostile at the time of the attempted detention.

[57] In the circumstances, no award will be made under the head of assault and battery.

(4) Aggravated and Exemplary Damages

[58] In considering Lord Devlin's Judgment in **Rookes v Barnard**, Thomas LJ said in **Richardson v Howe [2004] EWCA 1127** that:

"...aggravated awards were appropriate where the manner in which the wrong was committed was such as to injure the plaintiff's proper feelings of pride and dignity or gave rise to humiliation, distress, insult or pain.... It would therefore seem that there are two elements relevant to the availability of an aggravated award, first exceptional or contumelious conduct or motive on the part of the defendant in committing the wrong and second, intangible loss suffered as a result by the plaintiff, this is injury to personality'."

[59] In the case of **The Attorney General of Jamaica v Gary Hemans [2015] JMCA Civ 63** Williams JA, said that:

"...aggravated damages are to be awarded only where there was some feature in the behaviour of the appellant that required the respondent being additionally compensated beyond what he would have received for the assault, false imprisonment and malicious prosecution."

[60] The House of Lords in **Rookes v Barnard** laid down three categories of cases where exemplary damages may be awarded. There it was said that:

"...there are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal...The first category is oppressive, arbitrary or unconstitutional action by the servants of the government...Cases in the second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff...To these two categories which are

established as part of the common law there must of course be added any category in which exemplary damages are expressly authorised by statute."

[61] In looking at Exemplary Damages, in the cases of ***Delia Burke v Deputy Superintendent Carol Mckenzie and Attorney General Claim No. 2009 HCV 2885***, 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 wilful 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.*

[62] Based on the evidence presented in the case at bar, there are no circumstances aggravating or otherwise which require an award for damages. Furthermore, there was nothing pleaded on the facts presented to suggest that punishment ought to be meted out to Mr. Robinson for his behaviour as they were justified under the circumstances.

[63] Therefore, no award will be made for aggravated damages and no award will be made for exemplary damages.

CONCLUSION

[64] In all the circumstances, I find that the claimant is not entitled to any compensation in relation to the above heads of damages for which he has laid a claim.

S. Bertram Linton
Puisne Judge