IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009 HCV 03220

BETWEEN	**AINSWORTH EDMONDSON**	**CLAIMANT**
A N D	**ASSISTANT COMMANDER IAN THOMPSON**	**1st DEFENDANT**
A N D	**THE ATTORNEY GENERAL OF JAMAICA**	**2ND DEFENDANT**

Tort- malicious prosecution, false imprisonment, assault – detention in erroneous belief that warrant issued-whether reasonable steps taken to enquire whether warrant existed- damages

Althea McBean and Andre Duhaney instructed by Althea McBean & Co. for the Claimant.

Gail Mitchell instructed by the Director of State Proceedings for 1st and 2nd Defendants

Heard: 11th & 12th February, 2014, 4th &, 25th April 2014.

Cor: Batts J

[1] On the 25th April 2014 I delivered this Judgment orally. I now reproduce in permanent form the text of the decision delivered at that time.

[2] At the commencement of this hearing a complaint was made about the short service of a Further Amended Defence and a Further List of Documents. The latter with respect to various station diaries. I rose to allow consultation and inspection of the documents. When the sitting resumed the parties agreed to the following Orders being made:

a) Time extended to the 10th February 2014 for the filing and service of the Amended Defence and Further Amended Defence.
b) A Further List of Documents filed and served on the 11th February, 2014 will stand.

[3] The Crown then applied to have the Claim against the First Defendant struck out on the basis that the Amended Particulars of Claim were never served upon him. Having heard submissions I refused the application. At all material times the Attorney General of Jamaica (via the Director of State Proceedings) represented the Crown. The Crown is the employer of the 1st Defendant. Vicarious liability is not an issue in this matter. Therefore the Attorney General was seized of all matters related to the case against the 1st and 2nd Defendants. They had notice of the Amended Particulars and hence there is no prejudice to the 1st or 2nd Defendants. In it nothing new is said against the 1st Defendant. In any event the Claim had been duly served on the 1st Defendant as per Affidavit dated the 21st July, 2009. One consequence could be a Judgment in Default of Acknowledgement of service against the first Defendant. This would be odd indeed as he was present in Court and no doubt at all times assumed he was being represented by the Crown's Attorneys. I ruled that the Amended Particulars of Claim would stand and the trial proceed.

[4] This Claim was filed on the 3rd June, 2009 for damages for assault, battery, false imprisonment and malicious prosecution. It is alleged in the Amended Particulars of Claim that on the 11th December, 2006 the Claimant (then 42 years old) was standing in Half Way Tree, St. Andrew when he was unlawfully seized and forced into a marked Police vehicle. He was kept in custody for 11 days without charge until his release from the Spanish Town Police Station. The Claimant alleged, and called medical evidence in support of, certain physical injuries.

[5] Defendant's Counsel in closing submissions rather wisely conceded that there had been false imprisonment. This has narrowed the issues for my determination. I say "wisely" because the Defence was that the 1st Defendant who was in charge of a police patrol, had taken the Claimant into custody because of information received that there was a warrant outstanding for him at the Spanish Town Resident Magistrates Court. I believe that is a lawful basis reflective of a reasonable ground to detain. However that could not support

incarceration for longer than it would take to make reasonable enquiry. In their closing submissions at paragraph 51 the Defendants state:

> "Even if the 1st Defendant held a reasonable suspicion based on the report of the civilian, and even on the Claimant's own admission of having a criminal case that he thought had been resolved, it is submitted that he was then duty bound to satisfy himself that there was a real basis for continuing to hold Mr. Edmondson. Even though in his statement he demonstrates a desire for the Claimant to be released if no cogent information was forthcoming, and he admitted to the Court that in hindsight he should have seen the process through, the continued detention of Mr. Edmondson amounts to false imprisonment."

[6] That concession reduced the issues for my determination to the following:

a) What was the relevant period of false imprisonment
b) Was the Claimant assaulted by the Defendant or its servants or agents
c) Is an award for exemplary and/or aggravated damages appropriate
d) Damages and its quantification

[7] I will therefore not go through or restate the evidence adduced. I will refer only to such of the evidence as is necessary to resolve the issues.

[8] On the question of the relevant period of detention, I have no hesitation in deciding that there was no lawful basis to hold the Claimant for more than 4 hours. Our Police Force is equipped with radios and telephones and in some cases computers. If information is received that there is a warrant out for someone then a phone call ought to suffice to confirm or deny that fact. The 1st Defendant, a Special Inspector of Police says the Claimant was pointed out by a "civilian" as having an outstanding bench warrant. He was unable to give the name or address of the civilian, nor did he take a statement from that person. Nevertheless he took the Claimant into custody and to the Half Way Tree Police Station.

[9] It should be noted that, and the Defendants admit this, the Claimant denied from the outset that a warrant had been issued for his arrest. He stated to this Court that there had been a case and cross case for assault in Spanish Town, but it had been resolved or as he put it "quashed". The 1st Defendant says he left the Claimant in the reception area at the Half Way Tree police station. Before leaving he gave instructions that Spanish Town be contacted to see if there was indeed a warrant for the Claimant. The first Defendant remained only 15-20 minutes at the Half Way Tree Police Station. He never returned there nor did he make any further enquiries as to the Claimant's fortunes.

[10] The 1st Defendant's evidence on this aspect is worthy of quotation:

> "Para 15, several attempts were made to make telephone contact with the Spanish Town Police Station and the Greater Portmore Police Station. However we did not get through to the arresting officers at either station, but messages were left for them to return a call to the sergeant at the Half Way Tree Police Station. I however cannot recall who made the calls.
>
> Para 16, I told the man taken into custody, whose name I do not know ,that the sergeant of police at Half Way Tree Police Station would continue to make the calls to the Spanish Town Police Station and Greater Portmore Police Station about the allegations made against him.
>
> Para17, I spoke to the sergeant privately before leaving the Half Way Tree Police Station and gave him instructions to release the man if he was not getting anywhere with the calls to the Spanish Town or Greater Portmore Police Station regarding the alleged bench warrant for the man's arrest."

[11] When cross-examined the First Defendant admitted that he made no calls to verify the existence of the warrant and he was even unsure of the name of the person who made the calls. No further or other evidence was led from the Crown as to steps taken to verify the existence of a warrant. To his credit the First Defendant admitted that in hindsight he ought not to have left the Claimant at Half Way Tree until everything had been sorted out. No evidence that a warrant

had ever existed was placed before the Court nor indeed was there evidence of the system in place to verify the existence of a warrant or the usual time taken to do so. We do know based on the Claimant's evidence and station diaries tendered that days later the Claimant was taken to the Spanish Town Court where he was released without being taken before the Court.

DSP Duncan of the St Catherine North Division was asked and answered thus:

> "Q. Do you know if an Officer can release someone in custody if he went to Court and there is no matter there for him but he was previously in lock-up?
>
> A. I would want to say yes"

[12] On the evidence therefore I find that the Claimant was taken into custody on information that was false. There never had been in existence a warrant for his arrest. I find however that it was reasonable for the police to act on the information they received. The initial detention was therefore lawful based as it was on information which the officers reasonably believed to be credible. Such detention continued to be lawful only to the extent that reasonable steps were taken to verify or confirm such information. What are reasonable steps must depend on the gravity of the alleged offence for which the alleged warrant was issued as well as the condition of the Claimant and whether he for example was able to identify himself and cooperate and other surrounding circumstances.

[13] In this matter, when regard is had to all the factors including that the relevant warrant was alleged to be in Spanish Town, I hold that if the police were unable within 4 hours to verify the existence of the warrant then the Claimant ought to have been immediately released and with apologies. It was not suggested that the Claimant was otherwise than cooperative. He told them of the case in Spanish Town and that it was at an end. There is no suggestion that he did not have a fixed address or that his identification was in question. There is no suggestion that there was any peculiar or particular reason why information as to the existence of a warrant was not obtained. The Claimant's period of false imprisonment therefore commenced 4 hours after he was taken into police

custody. Judicial note can be taken that travel time to Spanish Town approximates to 45 minutes or less.

[14] The Claimant's evidence in chief does not say what time this occurred. He says it was on the 11th December 2006. It was suggested to him that his detention commenced on the 12th December 2006. He was however adamant that it was on Monday the 11th December 2006. The Defendant's account is supported by reference to various Station Diaries and in particular the "Agricultural Environmental and Traffic Unit" diary which is at the Harman Barracks. On the 12th December 2006 it is noted that the Claimant had been taken into custody. The time of actual detention is not noted. This diary note is part of the end of Duty Report and details all that transpired on the shift. Be it noted that the entry prior to that was made at 3.30 a.m. on the 12th December 2006. It is important to note also that the date appearing at the top of the page has been overwritten.

[15] The Crown also relied on the Prisoner in Custody book for the Half Way Tree lock-up. That has a clear entry #141 signifying that the Claimant was taken in on the 12th December 2006 at 4.30 p.m. However examination of the entries reveals that they are not always sequenced correctly so that entries 131 and 132 reflect detentions dated 12th December 2006 but entries 130, 133 and 134 reflect detentions dated 11th December 2006. It may well be that similarly the Claimant's notation was out of sequence. The Claimant after all had been in the reception area for some time at Half Way Tree and it is quite probable that his detention was not immediately noted. It is also quite probable that the 1st Defendant had no memory of details of the incident. I accept the Claimant's evidence that he was detained on the 11th December 2006 (a Monday) and find that this occurred in the afternoon at approximately 3.30 p.m. He ought therefore to have been released by 7.30 p.m. that night. The Claimant, I hold, was therefore falsely imprisoned from the 11th December 2006 at 7.30 p.m. to the 18th December 2006 at 4.30 p.m. That is by my calculation 6 days and 4.5 hours.

[16] The issue as to whether or not the Claimant was assaulted is easily decided. I prefer the Claimant's evidence on this matter. His description of what transpired, the force used and the mode and manner of the injury was graphic and realistic. He does not say, as well he might, that he was deliberately shoved against the police vehicle or otherwise assaulted. What he said is that in roughly pushing his head into the vehicle it was hit against the side of the roof of the bus. He also describes how he was "draped up" by the police. The 1st Defendant on the other hand has no real recollection of the incident. This is not surprising. It was after all a more or less routine patrol. When one looks at the Station Diary, his patrol generally arrested persons for illegal vending or traffic offences and also seized motor vehicles from time to time. I doubt very much he would or could recall if the Claimant had hit his head or side of the face on the roof of the police bus. I therefore find there was an assault as described and that the Claimant did suffer injury due to the manner of arrest. Was it malicious? I hold it was not. Was it without reasonable or probable cause? I hold that it was. There is no evidence that the Claimant resisted going into the police vehicle or that he refused to do so. Indeed the evidence suggests that at all material times he cooperated although protesting his innocence. I find that the force used to place him in the vehicle was excessive, unnecessary and unreasonable.

[17] On the issue of whether or not an award for exemplary and/or aggravated damages should be made, I have no hesitation in holding that there should be no award. The 1st Defendant and indeed all agents of the 2nd Defendant who had anything to do with the continued incarceration of the Claimant were extremely negligent. It is a neglect however that regrettably is systemic. This appears most eloquently in the testimony of Deputy Superintendent Duncan who initially could not conceive of release from custody otherwise than by Order of a Court. He rather reluctantly conceded that release might be done on instructions. The point I make is that once the 1st Defendant had left the Claimant in custody based on information that there was a warrant for him , there was no point, given the prevailing practice in the police force, at which he might have been released. It

was only on his arrival at Court in Spanish Town when no warrant could be produced that mercifully a senior officer took the decision to order his release. In these circumstances and having regard to the institutional shortcomings, I do not believe a punitive element would be right. Similarly and given the absence of malicious intent or any circumstances of aggravation in the sense of peculiar injury to the Claimant, I decline to make such an award. The general damages ought to suffice as compensation to the Claimant.

[18] This however leads me to the matter of general and special damages for false imprisonment and assault: With respect to his imprisonment the Claimant gave evidence that he was a painter by trade. He had been contracted to paint a house for "Mr. Aubry" for $160,000 and had actually received a $20,000 downpayment. He was also to do one for Mr. Walker in Green Acres for $96,000. He was unable to do either job because of his detention. He stated further that since his release people in the area have said he is a criminal and a thief. It appears to have affected his reputation on construction sites and therefore presumably his ability to attract painting jobs. I accept this aspect of his evidence as truthful. No documentary support was provided, however I will award as special damages $158,000 (96+140 less1/3) representing actual money lost on jobs due to his incarceration.

[19] The injury to reputation must be taken to be a necessary incidence of wrongful incarceration. It is compensated for by the award for loss of liberty and false imprisonment. The Claimant has not made a case for any peculiar or significant damage to his reputation. He was, we must remember, an accused person before the Court in Spanish Town albeit on a case that had been resolved without an adverse verdict. Claimant's Counsel submitted for an award of $500,000 to be subsumed under aggravated damages. However as already indicated I do not believe the circumstances of this case merit an award for aggravated damages. The fact of this judgment will I believe be some vindication of his character albeit delayed.

[20] General Damages for false imprisonment must therefore be considered. The submission of counsel for the Claimant and the Defendant did not diverge significantly on this. Each relied on the same authorities (Hassock v A-G HCV 4368 of 2006(consolidated) unreported judgment of Brooks J as he then was, in which the award was $350,000 for 7 days (or approx. $50,000 per day). When updated the award is $433,713.45. The authorities show that it is not a per diem computation, so that in Baugh v Courts Jamaica CLBO99 of 1997 (unreported judgment of Sykes J 6 October 2006) the Claimant received $200,000 for 2 days detention. This updates to approximately $424,649.30. I believe I should look at the matter in the round. I must consider also the circumstance of this Claimant who was moved around from one lock-up to another over a period of 6 days and 4 hours. When regard is had to the authorities I believe an award of $500,000 is consistent with the cases, appropriate, just and fair.

[21] I turn now to the question of damages for the assault. The Claimant says he was hit on the side of his head so much so he almost fell unconscious. That blow he says also caused the loss of a tooth. He called Dr. Ford to give evidence on his behalf. The Crown attacked the medical "report" as well as the evidence of Dr. Ford as being convenient and unreliable. I do not however accept these criticisms. My reasons are that the document put in evidence (Exhibit 1), is not and was not described as a report. It is entitled "Medical Certificate". It is dated the 25th of July 2013 and says that the Claimant was seen on the 20th December 2006. The doctor described his findings:

a) Swelling and tenderness overlying right maxillary area
b) Right upper incisor – shaking postural healing laceration at gum superiorly noted
c) Tender at right elbow posterior – laterally with decreased range of motion

The doctor further stated that there was ovascular damage to the tooth with loss of enamel.

[22] The doctor need not be a dentist to make these observations. It may have been otherwise if for example evidence as to the prospects for saving the tooth was sought to be elicited. As it is the doctor indicates only that when next he saw the Claimant the tooth was missing. He did refer the Claimant to a dentist but there is no evidence that the Claimant took his advice. I find that on a balance of probabilities the injury sustained by the Claimant was caused by the assault at the time of the arrest.

[23] I pause only to observe that the Defendants placed reliance on a Prisoners in Custody Book and in particular an entry for the 15th December 2006. The Claimant is there described as; "No physical complaint appears to be in good physical condition". That entry is not inconsistent with the Claimant's complaint. An injury to the tooth would not, save on close examination, be obvious to an untrained eye 3 or 4 days after it was suffered. Further the police officer giving evidence (Deputy Superintendent Bobbett Morgan) stated that these entries were based on observation by police officers and prisoner complaint. There is no medical examination.

[24] These then being the injuries, what is the appropriate award for pain, suffering and loss of amenities. In his evidence in chief the Claimant says,

> "I received injuries to my head, elbow, mouth, lost consciousness and also damaged a tooth. That these injuries affect me even now"

When applying previous authorities on damages a Court must not be unmindful of the fact that it is first and foremost the injury to the litigant before the Court which must be compensated for.

[25] Claimant's Counsel submitted for an award of $600,000. The authorities cited were Campbell v Dyke (1992) C 346 reported in Khan 4d p.149. The award was $225,000 when updated it is $1.560 million and Sutherland v HiLo Food Stores Ltd. (1979) S061 Khan 1d p.183 award $2,000 updated to $283,000. The

Attorney General relied on the same authorities and submitted that if an award was to be made that $200,000 was appropriate.

[26] I bear in mind that in the Damion Campbell case the Claimant was a child. He lost 3 upper permanent teeth, the loss of which also had psychological effects. I bear in mind however that Mr. Edmondson also suffered a blow to his head and elbow and that he was "draped" and shoved. I determine that an appropriate award for his pain and suffering is $500,000.

[27] As regards other items of special damage the Crown, albeit the documentary evidence was mostly absent, correctly concluded that the following award would be reasonable:

a. Cost of medical report	$10,000.00
b. Doctor's visits	2,000 per visit
c. Loss of clothing	$3,500.00

As to the rest (cost of denture, loss of gold chain and transportation to doctor) there was no cogent evidence. I agree with the Crown's submissions in this regard. The Claimant in his witness statement literally threw figures at the Court. I will therefore make an award consistent with the Crown's concessions.

[27] In the final analysis therefore there is judgment for the Claimant against the 1st and 2nd Defendants for Assault and False Imprisonment and I award damages as follows:

General Damages:

False Imprisonment	$500,000
Pain, suffering and loss of amenities	500,000
	$1,000.000

Special Damages:	**$**
Lost earnings	158,000
Cost of medical report	10,000
Doctor's visit @ $2000 per visit 2 visits	4,000
Lost clothing	3,500
	$ 175,000

Interest will run on Special damages from the 11th December 2006 @ 3% per annum and on General damages from the date 23/6/2009 @ 3% per annum, both until payment of this judgment.

Costs of course will go to the Claimant to be agreed or taxed

David Batts
Puisne Judge
25 April, 2014