



[2017] JMSC Civ. 59

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013 HCV 00637

BETWEEN	PETER BANDO	CLAIMANT
AND	DETECTIVE SERGEANT RALPH GRANT	1ST DEFENDANT
AND	THE ATTORNEY GENERAL FOR JAMAICA	2ND DEFENDANT

IN OPEN COURT

Akuna Noble instructed by Kazembe & Co. for the Claimant

Celia Middleton instructed by Director of State Proceedings for the Defendants

Heard: February 9 & 14, 2017 Delivered: April 26, 2017

Assessment of Damages - Malicious Prosecution - False Imprisonment - Principles guiding award - Aggravated Damages - Exemplary Damages - Loss of earnings - Whether psychological/psychiatric condition due to criminal proceedings - What awards are applicable.

CORAM: BERTRAM LINTON, J

BACKGROUND

[1] Peter Bando the claimant, discovered the dead body of Ms. Sandra McLeod on the 5th of June, 2005, at Merrill's Beach Resort, where he was employed as the Security and Resort Property Manager. He alerted the Negril police to his discovery and soon thereafter he was detained as a suspect and taken to the Negril Police Station in a marked police service vehicle.

- [2] Mr. Badoo remained in the lock up at the Negril Police Station for over two weeks without being charged or brought before the court, as the law dictates. On the 24th of June 2005, he was taken to court only after a Habeas Corpus application had been made and, at that time, quite strangely to the Supreme Court. The presiding Judge ordered that Mr. Badoo be taken before the Savanna La Mar Parish Court for the matter of his release to be determined. Mr. Badoo was later charged with murder.
- [3] On the 28th of June, 2005, he was taken before the Savanna La Mar Parish Court where bail was refused. Another attempt was subsequently made to secure bail for him but this was also unsuccessful. Bail was finally granted on an appeal of refusal of bail by a Judge in chambers at the Supreme Court.
- [4] On the 21st of April, 2005, his case was finally committed to the Circuit Court. With the exception of the return of Mr. Badoo's travel documents, the Learned Judge removed all bail conditions. As such, Mr. Badoo was taken to the Savanna La Mar Court Office where he was again detained because of administrative delays in relation to the amendment of his bail conditions.
- [5] Criminal proceedings against Mr. Badoo continued until May 14, 2012 when the Director of Public Prosecution offered no evidence and the case was dismissed.
- [6] On the 5th of February, 2013, Mr. Badoo filed a claim against Sergeant Ralph Grant, the Director of Public Prosecutions and the Attorney General for damages claiming false imprisonment, malicious prosecution, aggravated and exemplary damages and damages for psychiatric injury arising from his ordeal between the 5th of June 2005 – 14th of May 2012. It is to be noted that the suit was discontinued against the Director of Public Prosecutions.
- [7] The Attorney General did not acknowledge service or file a defence and as such, the claimant sought permission to enter default judgment against the state. This request was granted as the crown was denied an extension of time within which to file their defence.

[8] The matter is now before this court for Assessment of Damages.

THE CLAIMANT'S SUBMISSIONS

A. *False Imprisonment*

[9] The Claimant submits that he was falsely imprisoned as there was no evidence that pointed to his committing the crime for which he had been charged. He says that for his detention of 23 days, he should be awarded \$251,421.77 per day which would be a sum of \$5,782,700.71. Reliance was placed on the case of ***Attorney General v Glenville Murphy [2010] JMCA Civ. 50.***

B. *Malicious Prosecution and Aggravated Damages*

[10] Counsel for the claimant further submitted that criminal charges were brought against him out of malice and that there was no reasonable basis for them in the first place. It was emphasized that the proceedings lasted for a total of seven years, during which time the claimant's life was '*turned upside down*'. Counsel asked the court to consider the length of time which the Claimant was made to undergo prosecution and relied on the authority of ***Allan Currie v Attorney General of Jamaica Claim. No. 1989/C-315 delivered August 10, 2006.*** The court was asked to adjust the award in ***Allan Currie*** to reflect the difference in time which the prosecution lasted for. As such, the claimant requests the sum of \$23,217,801.20 as damages for Malicious Prosecution and Aggravated damages (*as per the claimant's response filed February 21st, 2017*).

C. *Exemplary Damages*

[11] The claimant also contends that another \$1,742,948.04 should be awarded for exemplary damages as the defendant's behaviour was unacceptable and outrageous.

D. *Psychological/ Psychiatric Damage*

[12] The claimant submits that he suffered psychological damage as a result of the entire ordeal. He was diagnosed with chronic post traumatic stress disorder as well as depression. He says that given the severity of his condition he should be awarded a sum of \$3,734,888.64. This total he has arrived at by multiplying the award in the case of ***Sharon Greenwood- Henry v Attorney General of Jamaica Claim. No. 116 of 1999 delivered October 2005*** by 3 to reflect the severity of his condition in comparison to the claimant in ***Greenwood-Henry***. Further based on his reliance on the case of ***Celma Pinnock v The Attorney General for Jamaica Khans Vol. 5 page 289*** he should be awarded a further \$12,135,872.14 for psychological damage.

E. *Special Damages*

[13] Initially, the claimant submitted that Mr. Badoo was to be compensated for special damages in the sum of 35,480,571.04 to reflect costs for medication, transportation, doctors visits and reports, credit from supermarket, loss of income, loss of future income, legal fees, monies borrowed from Vandev Electrical plumbing and hardware and lodging to attend court. However, in their submissions in response to the defendants' submission they claimed special damages in the sum of \$8,559,000.00.

[14] The court is unsure as to the basis of the revision. However, it is clear from Mr. Badoo's evidence that he lost his job and his earnings from that job because of his arrest, charge and the pending trial. In support of this, he has submitted proof from his former employers of the salary he was earning when he stopped working and what he would have earned for the period during which the trial was pending. He subsequently returned to work at the end of the process when the case was dismissed.

[15] In addition the evidence presented by the claimant under this heading included various receipts for doctors visits and medication. Evidence was also given as to Mr. Badoo's legal fees throughout the criminal trial process.

THE DEFENDANTS' SUBMISSIONS

A. *False Imprisonment*

[16] In relation to false imprisonment, the defendants submit that the claimant's request is unreasonable. Firstly, they contend that the length of time for detention is not 9 weeks and 4 days as claimed in the particulars. They say that the authority of ***John Crossfield v Attorney General Claim. No.E219/2001 delivered September 10, 2009*** provides that the length of detention to be claimed in respect of false imprisonment is the time between initial arrest and the claimant being brought before the court for the first time. In these circumstances he should be awarded for 19 days detention. Also, relying on the authority of ***Devon White v Lenworth Cammock and Attorney General Claim. No. 2006 HCV 00787 delivered April 2, 2009***, the defendants say that he should be awarded \$154,000.00 for the first day of detention and \$85,000.00 for each day thereafter. This would total \$1,648,000.00 for damages for False Imprisonment.

B. *Malicious Prosecution*

[17] In relation to malicious prosecution, the defendants submit that the claimant's calculation is erroneous. They say that the authority of ***Allan Currie*** on which the claimant is relying is misleading as the award there covered two heads of damages and was not confined to malicious prosecution only. Instead, the defendant says reliance should be placed on the case of ***Roderick Cunningham v Attorney General et al [2014] JMSC Civ. 30*** which details factors the court took into consideration before awarding damages for malicious prosecution. These factors include:

- (a) *Seriousness of the offence charged*
- (b) *Length of time the prosecution lasted*
- (c) *Number of times he attended court*
- (d) *Any damage to reputation or credit*

(e) *Mental distress or anxiety, humiliation and or disgrace and any inconvenience, indignity and discomfort caused from the fact of the charge against him*

It is submitted that this case and the award handed down was more appropriate in the circumstances. As such, the sum of \$3,500,000.00 would be an acceptable award since the case at bar is analogous to the **Cunningham** case.

C. *Aggravated and Exemplary Damages*

[18] Counsel for the defendants contend that aggravated damages ought to be awarded in the sum of \$700,000.00. This amount was submitted as reasonable having regard to the similarity between the aggravating circumstances in **Roderick Cunningham** and the instant case. It was submitted that the case relied on by the claimant presented more extreme circumstances which cannot be compared to the case at bar. Furthermore, they contend that the same amount of \$700,000.00 ought to be awarded for exemplary damages based on **Roderick Cunningham**.

D. *Psychological/ Psychiatric Damage*

[19] In relation to the psychiatric injuries which the claimant suffered, the defendant submit that the court ought to consider whether there is sufficient nexus between the circumstances described by the claimant and his psychological damage. They submit that the claimant's request for two separate awards is unfounded and that the reliance placed on the **Celma Pinnock** case ought to be approached with caution because the award there spanned different heads of damages. Instead, the defendants ask the court to have regard to the cases of **Ryan Henry v Kingston Container Terminal Services Limited [2015] JMSC Civ. 154**, **Angeleta Brown v Petroleum Company of Jamaica Limited and Juici Beef Limited Cl. No. 2004 HCV 01061 heard April 27, 2007** and **Vanura Lee v Petroleum Company of Jamaica and Juici Beef Limited Cl. No. 2013 HCV 01517 heard December 16, 2004**. They submit that the award for

psychiatric damages ought to be at most \$1,300,000.00 in keeping with these authorities.

E. *Special Damages*

[20] As it relates to special damages, the defendant submitted that all damages under this head must be specifically proven. As such, based on their examination of the special damages proposed by the claimant, they submit that the award should be \$84,937.26 to reflect only what was specifically proved.

ISSUES

[21] In assessing the damages to which the claimant is entitled, the issues for consideration are:

- (a) What is the appropriate length of time of detention to consider in order to assess damages for false imprisonment and what is an appropriate award;
- (b) Can damages for malicious prosecution be significantly reflective of the length of time of the prosecution and what is an appropriate award;
- (c) What is the appropriate quantum of damages to be awarded for aggravated and exemplary damages if any award is made;
- (d) Can the claimant be awarded for psychiatric/psychological damage under a separate head of damage and if so what amount is appropriate in the circumstances; and
- (e) What amount of special damages should be awarded if at all.

ANALYSIS

[22] I have given careful thought to all the submissions presented and all the arguments and case law as cited, I have no intention of reiterating them here in

detail but will refer to them as is necessary to explain my reasoning and decision in this matter.

A. *False Imprisonment*

What is the appropriate length of time of detention to consider in order to assess damages for false imprisonment and what is an appropriate award

[23] An action for False Imprisonment can only be maintained where a person has been detained unlawfully i.e. without legal justification. **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 simple terms it is when ones liberty is taken away and he is detained against his will without legal justification.

[24] Harris JA in **Attorney General v Glenville Murphy** 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**”*

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

[26] 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”.

[27] In ***McGregor on Damages*** 17th edition para. 37-007 it was said that:

“The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left very much to the jury’s or judge’s discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation.”

[28] The proposition made by Morrison JA in ***John Crossfield v Attorney General and Corporal Ethel Halliman*** [2016] JMCA Civ. 40 is that cases should be compared in order to find an appropriate award based on circumstances which are similar in nature. In ***Maxwell Russell v Attorney General for Jamaica and Corporal McDonald*** Cl. No. 2006 HCV 4024 delivered January 2008, Mangatal J (as she then was) noted that:

“In a straight forward case of wrongful arrest and imprisonment the starting point is likely to be about \$500 for the first hours during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guidance we consider, for example that a plaintiff who has been wrongfully kept in custody for 24 hours should for this alone normally be regarded as entitled to an award of about \$3000. For subsequent days the daily rate will be on a progressively reducing scale.”

I will adopt this learning and method of assessment as it is reasonable in the circumstances and provides a level of guidance on the calculation of such awards.

- [29] As well in ***Thompson v Commissioner Of Police Themetropolic*** [1998] QB 498 Lord Woolf said that damages for false imprisonment is something that is akin to pain and suffering, as such it should be adjusted for future inflation.
- [30] It is the position then that to calculate the amount of days for which the claimant ought to be compensated; the court must consider the period between the date of initial arrest to the date he/she is first brought before the court. As such, the claimant must be compensated for the period of time he was unnecessarily/unlawfully detained: (***John Crossfield***).
- [31] It is the claimant's evidence that he was arrested on June 5, 2005 and first brought before the court on June 24, 2005. Further, when his bail conditions were being altered, and after he was granted bail by the court, he was again detained for an additional four days before the process was complete. It is curious that a procedure which would otherwise be complete in a short time took days and as such I find that he was again unlawfully detained. In the circumstances, Mr. Badoo was detained for a total of 23 days and this will be the time period considered in order to compute the award of damages under the heading of false imprisonment.
- [32] In ***John Crossfield*** the claimant was a security guard who was detained for 4 days before being brought before the court. He was detained in relation to the breaking in of a warehouse for which he was the guard. He was charged for a plethora of offenses including breaking into the said warehouse. He was taken into custody on the same night of the incident and was in his uniform at the time he was arrested. While in custody, he had developed skin fungus and chicken pox. He was awarded \$600,000.00 which amounts to \$150,000.00 per day. This updates to \$243,814.08 per day.
- [33] In ***Clayton Tyndale v Corporal Orville Clarke and The Attorney General of Jamaica*** [2017] JMSC Civ 41, the claimant was a bus driver who was arrested for Rape and detained for a period of thirty five days. He was arrested in the bus

park and was taken into custody in front of passengers and other on-lookers in the vicinity. He was awarded the sum of \$121,000.00 per day or \$4,235,000.00 in total.

[34] Having regard to the circumstances of the cases above I am of the view that Mr. Badoo's circumstances are more severe than those outlined in **Clayton Tyndale** and are more in line with the circumstances of **John Crossfield**. As such, I have used **Crossfield** as a starting point in order to determine a daily award for Mr. Badoo. However, there are several nuances which will elevate Mr. Badoo's damages over that of Mr. Crossfield. Firstly, the charges Mr. Badoo faced were far more severe than that of Mr. Crossfield. Secondly, I have noted that Mr. Badoo was detained for a far longer time than Mr. Crossfield and having regard to this, his award will be adjusted accordingly. And finally, Mr. Badoo was the Resort Property Manager and in keeping with his duties responsibilities and status, he alerted the police to the crime that had been committed in the first place.

[35] In the circumstances, I find that the sum of \$250,000.00 for the first day and the \$150,000.00 for each day thereafter is appropriate. This amounts to **\$3,550,000.00** and this is the award to be given under the heading of **False imprisonment**.

B. *Malicious Prosecution*

Can damages for malicious prosecution be significantly reflective of the length of time of the prosecution and what is an appropriate award?

[36] Brooks J in the case of **Keith Nelson v Sergeant Gayle and The Attorney General of Jamaica** Claim No. CL 1998/N-120 heard April 20, 2007 stated that in order to succeed in a Malicious Prosecution case 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.*

This position was also adopted in ***John Gaynor v Cable and Wireless Jamaica Ltd and Superintendent G.C. Grant and the Attorney General***) Suit No. C.L. 2000/G-124 as well as the ***Herwin Fearon*** case. On the bare facts of Mr. Badoo's case all these requirements have been fulfilled.

[37] In ***Thompson***, Lord Woolf MR noted that:

*“... the figure should start at about £2,000 and for prosecution continuing for as long as two years, the case being taken to the Crown Court, an award of about £10,000 could be appropriate. **If a malicious prosecution results in a conviction which is only set aside on an appeal this will justify a larger award to reflect the longer period during which the plaintiff has been in peril and has been caused distress.**” (emphasis added)*

It is clear that when considering damages for malicious prosecution, the court must take into account, in addition to the injury of the claimant's pride and dignity, the length of time the prosecution lasted for. It is this length of time which affects the level of injury to feeling which the claimant is made to suffer.

[38] In the instant case, I have considered that there was no mention of whether an investigation took place. However, it is reasonable to infer from the facts as presented by the claimant that no investigation was done as he was arbitrarily arrested in relation to Ms. McLeod's death. Like damages for False Imprisonment, Malicious Prosecution is determined by a comparison of cases and the circumstances which they present. It must be clearly stated that there are no two cases which are alike, as such the court must weigh each case based on the facts presented.

[39] In ***Maxwell Russell***, the claimant was prosecuted for a period of one year. He was awarded the sum of \$250,000.00 as damages for Malicious Prosecution. This updates to \$497,906.19 using the CPI of 237.8. I have considered that the

charges in this case are far less severe than that of Mr. Badoo and as such the effects would have been more pronounced; Mr. Badoo was being charged with Murder.

[40] In *Roderick Cunningham*, the claimant was prosecuted for a period of 19 months before the charges were dismissed. In this case, the claimant was charged for illegal possession of firearm and ammunition which, though they are serious, are not as serious as Mr. Badoo's charge. Mr. Cunningham was awarded with the sum of 1,600,000.00. This updates to \$1,795,563.94.

[41] In *Allan Currie*, the claimant was charged for murder in addition to illegal possession of firearm and ammunition. He was prosecuted for approximately 2 years before the matter came to an end. He was awarded \$2,000,000.00 for damages for malicious prosecution and aggravated damages. This award updates to \$4,794,354.84.

[42] I am of the view that having regard to the severity of the charge and the lengthy prosecution, Mr. Badoo would have suffered more injury to his pride than the claimant's in *Cunningham* and *Russell*. I have given consideration to *Currie* but I am mindful of the fact that *Currie's* award spanned over two heads of damages. Nonetheless, I find *Currie* instructive as the charges were the same. As a matter of fact, I find that Mr. Badoo's circumstances are more severe than all three cases especially since Mr. Badoo's prosecution lasted for seven years.

[43] It is bearing in mind these considerations why, I will award damages for **Malicious Prosecution** in the sum of **\$4,500,000.00**.

C. *Aggravated Damages*

What is the appropriate quantum of damages to be awarded for aggravated and exemplary damages if any award is to be made?

[44] The authority of *Rookes v Barnard* [1964] AC 1129 outlines the marked difference between aggravated and exemplary damages. Aggravated damages

are awarded by the court to compensate a claimant for humiliation, distress, insult and injury to his pride and dignity based on the manner in which the actions of the defendant has affected him. In applying **Rookes**, it was noted in **The Attorney General of Jamaica v Gary Hemans [2015] JMCA Civ 63** 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.”

[45] It is the claimant’s case that he was arrested and taken into the police vehicle in front of a crowd of people who had gathered at Merrill’s Beach Resort on the day in question. Further, he says that he was beaten in prison on several occasions. He also contends that when he fell in the shower at the lock up and injured his back he asked for and was deprived of medical assistance and medication. It was only when his attorney brought a doctor to see him that he was able to get some care.

[46] Further to this, after the doctor prescribed medication for Mr. Badoo, it was never given to him despite of the fact that his wife bought the medication and left it at the police station. This medication was only returned to him sometime after he had been granted bail and this would mean that not only was he not taken for treatment but that even when eventually seen by the doctor brought by his attorney, he was denied the medication that had been prescribed to alleviate the effects of the injury he suffered. He also told us that when he was taken to be questioned at the station, it was done in the night in a cold office while he was only wearing underwear and a T-shirt.

[47] After he was released on bail. He said he was unable to find work in his industry because of the stigma attached to his pending murder trial and this resulted in him being unemployed throughout the duration of the trial and the resulted to injury to his reputation.

[48] In my mind, the circumstances outlined by the claimant indeed shows that he suffered at the hands of the defendants. While the manner of his arrest was

exasperated by the presence of the crowd which converged, I find that his treatment throughout his detention and treatment after receiving bail are most alarming. I find that the authority of **Sharon Greenwood-Henry** as relied on by the Claimant is far more aggravating than the circumstances he has outlined. In the same breath, I do not believe that the defendant's alternative of **Roderick Cunningham** is acceptable as they are less severe than that of the instant case. As such, I believe a suitable middle ground would be appropriate.

[49] Therefore, I find that the Claimant is entitled to **\$1,200,000.00** for **Aggravated Damages**.

D. *Exemplary Damages*

[50] Lord Devlin in **Rookes** said that:

"... where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's, he might, perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service."

[51] Exemplary damages are not awarded in an effort to compensate the claimant but to punish the defendant and to deter him and others in a similar position from committing outrageously wrongful acts. This type of damages, also called punitive damages, is award specifically in circumstances where agents of the government engage in oppressive, arbitrary and unconstitutional acts. The awarding of this head of damages conveys the court's disapproval of the acts committed by the defendant and it is hoped that by instilling this head of damages that such acts will not be repeated.

[52] I have accepted that this particular head of damages will increase based on the rank of the agent of the state as stipulated in **Roderick Cunningham**. I agree that the seniority of the defendant's position dictates that he ought to conduct himself in a manner which is befitting of his position. Certainly it is expected that

his behaviour will be the example to follow. The officer in this case is a Sergeant and one would consider this post to be a high rank.

[53] Based on the circumstances described in the claimant's witness statement at paragraph 34-35 and 42-50, I find that the acts committed by Sergeant Grant were very high handed and unwarranted under the circumstances. The claimant says that:

34. In the CIB room the First Defendant tried to question me.

35. Upon refusing to answer his questions the first defendant slapped me across my face with his hand, he then tried to use his baton to hit me, in an effort to block my face from the impact of the baton, I was hit very hard on my left wrist with the baton.

...

42. After I was removed from my hot cell wearing only a T-shirt and under-pants, I was taken to the CIB office.

43. I was made to sit under an air conditioning vent which was blowing very cold air. I asked to sit somewhere which was not so cold but my request was ignored.

44. I observed several other police personnel, the First Defendant, detective Sergeant Ralph Grant was present in the room and wanted to conduct a question and answer session with me.

45. I asked how was I to have a question and answer without my attorney present but was given no concrete answer.

46. One Mr. Cliff Reynolds was introduced to me as a Justice of the Peace

47. I refused to answer any question posed to me.

48. The First Defendant told me that I could just give an answer to what my name was.

49. I agreed. The first defendant started asking me other questions and I refused to answer.

50. The first defendant grabbed me by the waist of my underwear and shouted 'yuh naa ansa no question nuh, yuh bomboclaat yuh, yuh, raasclat yuh, yuh, dutty murdarah yuh I now charge you with the murder of Sandra McLeod.

The actions Sergeant Grant when considered collectively were indeed arbitrary, oppressive and unconstitutional and went over and above what was justified or necessary in the circumstances. I believe that the defendant acted in a high

handed manner and I also accept that the claimant Peter Bandoo was subjected to unnecessarily oppressive treatment and I so rule.

[54] In looking at this head of damages, I am also mindful of the caution given in the cases of ***Delia Burke v Deputy Superintendent Carol Mckenzie and Attorney General Claim No. 2009 HCV 2885, Noel Gravesandy and Broome v Cassells & Co. Ltd [1972] 2 WLR*** and ***Rookes 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.*

[55] Taking all of that into account, I am of the view that the sums previously awarded do not sufficiently cover the punitive and exemplary elements of the damages Mr. Bandoo suffered. In the circumstances, I think an additional award of **\$2,000,000.00** is a reasonable award for **Exemplary Damages**.

E. *Psychiatric/ Psychological Injury*

Can the claimant be awarded for psychiatric/psychological damage under a separate head of damage and if so what amount is appropriate in the circumstances

[56] Psychological trauma is a type of damage to the mind that occurs as a result of a severely distressing event. Trauma is often the result of an overwhelming amount of stress that exceeds one's ability to cope, or integrate the emotions involved with that experience.

- [57]** I find that there is sufficient nexus between the ordeal that Mr. Badoo was made to undergo from June 5, 2005 to May 14, 2012, and his diagnosis of depression and post traumatic stress disorder. I do not agree with counsel for the defendants that the cause of Mr. Badoo's psychological trauma was only his treatment when he was detained. I find that the continuation of the court process contributed to his psychiatric/psychological damage. In addition, the constant stress of having to attend court over a lengthy period of time as a murder accused would have affected, as he suggests, his emotional, sexual and psychological well being. This certainly is believable because of his training as a former army officer and the status he had enjoyed among his peers in the hotel and tourism industry, with his family, his employees and the community as a whole.
- [58]** In order to recover for future medical expenses there must be medical testimony that states to a reasonable degree of medical certainty what future medical expenses will result or has resulted from the original injury and the reasonable cost of those medical services. In the event that those medical services are projected over a lengthy period, then the cost of the future medical expenses must be reduced to present value.
- [59]** Mr. Badoo consulted Doctor Karen Richards, Clinical Psychologist and she found that he suffers from post traumatic stress disorder as well as symptoms of anxiety and depression. She also found that he was at risk for suicidal behaviour. He was treated with anti depressants and it was recommended that he continue treatment up to a maximum of 2 years. I have accepted Dr. Richards' assessment of Mr. Badoo and her finding that his psychological issues arose as a result of his detention and prosecution.
- [60]** She was careful to outline that his pre-trauma history showed that he functioned within reasonable limits in his social, occupational and domestic life. She testified that his job, for example, entailed many layers of interpersonal contact and he

had a history of military service all without any report of dysfunction or disciplinary problems.

[61] I have noticed that Mr. Badoo has claimed damages for psychological issues as well as damages for PTSD. I am of the view that his psychological issues would encompass PTSD and so I will make one award. Nevertheless, I must point out that counsel for the claimant gave no reason for the delineation and I find that there is none in these circumstances.

[62] In the case of **Sharon Greenwood-Henry**, the claimant was detained at the Norman Manley airport and taken to the Kingston Public Hospital where she was obliged to do an x ray and was coerced to take laxatives in search of drugs they suspected that she had ingested. No drugs were found and she was released the following day. She consequently suffered from depression, anxiety and insomnia among other psychological injuries. She was awarded \$500,000.00 for her psychological distress. This updates to \$1,260,869.57.

[63] In **Ryan Henry v Kingston Container Terminal Services Limited [2015] JMSC Civ. 154**, the claimant suffered physical injuries at work and was assessed as having chronic PTSD complicated by depression and anxiety. He was awarded \$1,182,926.00 for his distress. This updates to \$3,077,341,68.

[64] Having considered the cases, I find that although the circumstances giving rise to each person's psychological damage is different, the results are similar. This type of injury depends on the person. It is the view of the clinical psychologist Dr. Karen Richards that the claimant requires, *“psychological therapy specifically Trauma Focused Cognitive Behavioural Therapy, by a suitably qualified professional. He may also benefit from psychiatric support.”*

[65] I find that Mr. Badoo has suffered psychological/psychiatric damage as a result of his arrest, detention and the protracted stressful circumstances of the case, and is entitled to an award not only for that damage but an amount which would allow him to seek the intervention he needs in this regard. The evidence is that a

reasonable period for intervention would be for some 18 months to 2 years with sessions approximately twice weekly initially for the first two months and then bi-monthly thereafter, and that the average cost of the consultation as evidenced by Dr. Karen Richards is \$8000.00 per session.

[66] In addition Dr. Richards said that he would require medicine to be used as an adjunct or add-on means of support for his diagnosis of Post traumatic stress disorder. Based on her consultation with Mr. Badoo's primary physician, his medicines would cost approximately \$9,000.00 per month. The estimated cost of the consultations plus medication is some \$176,000.00.

[67] Under this heading **Psychiatric/Psychological injury** therefore I award the sum of **\$3,000,000.00** to cover his injuries and the expenses anticipated to address his future medical treatment.

F. *Special Damages*

[68] Mr. Badoo's Claim for special damages is very extensive and includes out of pocket expenses spanning a period of seven years as well as the time spent on bringing the claim at hand. Nonetheless the court's starting point is to highlight that special damages must be specifically pleaded and proved. In ***Bonham-Carter v Hyde Park Hotel Ltd (1948) 64 TLR 177***, Lord Goddard C.J said that:

"Plaintiffs must understand that if they bring actions for damages it is for them to prove their damages, it is not enough to write down the particulars and, so to speak, throw them at the head of the court, saying: ' This is what I have lost; I ask you to give me these damages.' They have to prove it."

This view was applied in the Jamaican case of ***Lawford Murphy v Luther Mills (1976) 14 JLR 119***.

[69] It is especially important for the court to determine the manner in which special damages ought to be pleaded and how they are proved. I must note the quote of Wolfe JA (as he then was) in the case of ***Desmond Walters v Carlene Mitchell (1992) 29 JLR 173***, where he said:

“Without attempting to lay down any general principles as to what is strict proof, to expect a side-walk vendor to prove her loss of earning with mathematical precision of a well organized corporation may well be what Bowen, LJ referred to as ‘the vainest pedantry.’”

Over the years, this quote has been the backbone of judges allowance of special damages claim for small transportation cost because of the informal nature of the transaction. However, I must go further to say that each individual claim under special damages must be assessed on a case by case basis and must not be lightly granted. The court is not minded to allow claimants to select figures at their whim and claim them as loss suffered.

[70] Based on the above analysis, I will tackle the claimant’s list of special damages.

(1) Proved Special Damages

[71] Loss of earnings - \$10,170,207.52

Throughout the period of his prosecution Mr. Badoo was suspended from work. He has presented the court with verification from his past employers of what his salary would have been had he continued to work. I accept this and as such I will grant him loss of earnings of the amount claimed. The figures for the loan and his grocery bill indebtedness will not be awarded as these expenses would have been met from his earnings and so to give him both would amount to double compensation.

[72] Doctor’s visits (Edwards medical centre) - \$ 44,500.00

Mr. Badoo has presented receipts for Doctor’s visits he made to Edwards Medical Centre. I accept these receipts and acknowledge that he was only obliged to do so based on the circumstances the defendants brought about. Therefore, I will grant the sum above for Doctor’s visits.

(2) Unproved Special Damages

[73] Legal Fees - \$8,000,000.00

Mr. Badoo's claim for legal fees in the above amount has not been substantiated. I agree with the submission of counsel for the defendants that more is required than just the evidence of counsel that he paid the cost stipulated. I must go further to say that it is curious that all three attorneys at law received remuneration but yet no evidence of payment can be presented. No receipt, no cheque, no statement of account; not one iota of proof that these fees were receipted. The court is particular about strict proof of special damages and while the '*side-walk vendor*' is not expected to keep precise records, officers of the court are. In the circumstances, the amount claimed as legal fees is not granted

(3) Unaccepted Special Damages

[74] Lodging and Transportation - \$212,500.00

The receipts for lodging and transportation are quite non-specific and do not make logical sense. Firstly, they do not sufficiently advise the court as to where the lodging took place in order to make sense of the amount charged. Secondly there are receipts for transportation from Westmoreland on dates when Mr. Badoo was shown in other receipts to be in occupation of lodging in Kingston. Although theoretically the court would be prepared to view the transportation receipts in the same way as that of the proverbial "vendor", they have lost credibility and the court is not able to view them as genuine expenses incurred for the claim as presented.

[75] In the circumstances, I will grant **Special Damages** in the sum of **\$10,214,707.52** to reflect the lost earnings and medical expenses and doctors visits.

SUMMARY OF AWARDS

[76] In the circumstances, the claimant is entitled to:

(a) General Damages in the sum of - **\$14,250,000.00**

i.	False Imprisonment	-	\$3,550,000.00
ii.	Malicious Prosecution	-	\$4,500,000.00
iii.	Aggravated Damages	-	\$1,200,000.00
iv.	Exemplary Damages	-	\$2,000,000.00
v.	Psychological Damage and Future Medical		
		-	\$3,000,000.00

(b) Interest on General Damages at a rate of 3% per annum from February 5, 2013, the date of service of the Claim Form to April 26, 2017, the date of judgment.

(c) Special Damages in the sum of - **\$10,214,707.52**

(d) Interest on Special Damages at a rate of 3% per annum from June 5, 2005, the date of Mr. Badoo's detention to April 26, 2017, the date of judgment

(e) Cost to the Claimant to be agreed or taxed.

S. Bertram Linton
Puisne Judge