

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM NO. CL 1989/C-315

BETWEEN ALLAN CURRIE CLAIMANT

AND THE ATTORNEY DEFENDANT
 GENERAL FOR JAMAICA

Dennis Daly Q.C. & Rudolph Smellie for Claimant instructed by Daly Thwaites & Company.

Curtis Cochrane for Defendant instructed by the Director of State Proceedings.

Heard: September 16th, 17th, 18th, 19th, 20th 2002 & August 10th, 2006.

Rattray, J.

1. It was a Friday evening, but not like all the other Friday evenings. The work week had come to an end for Allan Currie. He had collected his pay cheque from his employer Allied Meat Stores in New Kingston, popularly known as John R. Wong and he left to meet his girl friend. After having a few drinks with her at the Clock Tower Bar, he sent her off on a bus to go home.
2. As was his usual habit on a Friday, Allan Currie headed to a restaurant at Torrington Bridge to have a meal. Afterwards he joined a co-

6. Allan Currie testified that the police officers, particularly Mr. Phipps and Mr. Duncan started beating the men in an attempt to find out the identities of the persons who were in possession of the firearms found on the bus. Mr. Currie further testified that as the beating continued, while he lay on the ground he heard a man say to Mr. Phipps “ me a big man, me nah go to prison for gunman, mek me show you who had the gun” and that man pointed to two (2) of the other men.
7. As the men pointed out were being beaten, Mr. Currie stated that he felt a revolver ‘jook’ him in his head and he was told by the police to get up. When he stood up, he was hit in his head with a gun by Mr. Phipps and the other policemen started to beat him and comments passed about him were that he had on ‘Clarke shoes’ and ‘only bad man wear Clarke shoes.’
8. Despite pointing to out Mr. Duncan where he was seated on the bus and the lady beside whom he had been seated, Allan Currie’s protestations of innocence fell on deaf ears. He was dragged up and taken behind the bus where his life was threatened by two (2) police officers who pointed firearms at his head and under his neck. Eventually, he was taken and put to lie face down in the police Land Rover with his feet hanging out and transported to Central Police Station.

worker for some drinks at the adjoining bar where he remained for a couple hours.

3. At about 9 pm that night - the night of October 16, 1987 - he left the bar and boarded a bus to head home. The bus should have travelled on to Orange Street to go downtown but instead the driver took a detour and drove by National Heroes Circle, where they came across a police road block in the vicinity of the Stanley Motta building.
4. Allan Currie says that the male passengers were ordered off the bus by a Sgt. Duncan and were searched as they alighted by a Constable Phipps. The women however remained on the bus while Mr. Phipps conducted a search of the vehicle. He emerged with a firearm in his hand, removed the ammunition, gave them to Mr. Duncan and went back inside the bus. On his return from the bus, he was carrying another firearm from which he removed the bullets and again turned the gun and bullets over to Mr. Duncan.
5. While this was happening, the men were outside the bus and Allan Currie's evidence is that the men were ordered to lie face down on the ground in the road. The women were then instructed to come out of the bus.

bending down at the back of the bus and throw something under the back seat.

12. On the evidence presented, he was committed to stand trial at the Home Circuit Court on the charge of murder, which trial commenced the 17th April, 1989 and concluded on the 19th April, 1989 with his acquittal. During that entire period, from the 16th October, 1987, Allan Currie remained in custody. But this was not the end of the matter. There still remained the pending charge of illegal possession of firearm and ammunition. After his acquittal on the murder charge on the 19th April, 1989, Allan Currie was released on bail on the 4th May, 1989. The charge of illegal possession of firearm and ammunition was dismissed in June, 1989 when no evidence was offered by the prosecution.
13. The case for the Attorney General relied primarily on the evidence of two (2) witnesses – Sgt. Cyril Duncan and Inspector Michael Phipps. Mr. Phipps at the date of the incident was a member of the police party holding the rank of Constable.
14. Mr. Duncan was the officer in charge of the police party conducting the road block that night. He stated that he signalled the driver of the bus to stop and directed him to the left side of the road. He instructed the

9. This mistreatment he complained, continued at Central Police Station where he was beaten by Mr. Duncan with a 2'x 4' piece of wood and by other police officers including Mr. Phipps. He was kicked all over his face and a gun was pushed into his mouth breaking two (2) of his teeth. These teeth were subsequently removed while he was at the General Penitentiary .
10. At the Central Police Station on the night of the 16th October, 1987, Mr. Duncan advised him that he was being charged with illegal possession of firearm and ammunition. On Monday the 19th October, 1987, a Mr. Morgan from the Constant Spring Police Station advised Allan Currie that the gun for which he was charged with illegal possession had been used to kill someone on the 16th October, and that he was being charged with murder and robbery.
11. After an identification parade was held at which Mr. Currie says he was not pointed out, the charge of robbery was dropped. He was first taken to Court in November, 1987 about two (2) weeks after the identification parade was conducted. The preliminary enquiry with respect to the murder charge started in February, 1988 at which evidence was given by Mr. Duncan and Mr. Phipps. At that hearing Allan Currie stated that Mr. Phipps testified that he saw Mr. Currie

Phipps returned with a 9mm semi automatic pistol which he unloaded, removed eighteen (18) live rounds from its magazine and handed both sets of items to Mr. Duncan, which were shown to the passengers. This firearm Mr. Phipps advised had been found at the right side of the bus about two (2) seats behind the driver.

17. Mr. Phipps returned to the bus and emerged carrying a second firearm, a .38 Smith and Wesson revolver. Mr. Duncan's evidence is that Mr. Phipps opened the chamber of this firearm and removed five (5) live .38 cartridges which were handed to Mr. Duncan along with the firearm and these items were also shown to the passengers. The second pistol was said by Mr. Phipps to have been found hidden about three (3) seats from the rear on the right side of the bus, where Mr. Duncan stated he has observed another male passenger putting something under the seat.
18. Despite his attempts to elicit from the passengers the identities of the persons who had the firearms, Mr. Duncan was unable to obtain the requested information. He says he instructed all the male passengers to lie down on the sidewalk, while the females were allowed to remain standing. One of the male passengers, a Barrington Taylor, got up from the sidewalk and pointed to Allan Currie and one Garfield Pusey as the

police personnel to surround the bus and told the driver to switch off his headlights and ignition and alight from the bus with his documents. The bus was a right hand drive vehicle and when speaking to the driver, Mr. Duncan stated he was on the right hand side of the bus, near to the driver.

15. His evidence is that immediately as the bus came to a stop, a male passenger rushed from the front of the bus towards the rear and appeared to throw something on the floor about two (2) seats behind the driver. By then he says, he went around to the left side of the bus facing downtown Kingstown and was on the sidewalk. As the lights were on in the bus, which had approximately twenty five (25) passengers, Mr. Duncan said he could see inside the bus and he observed another male passenger in the third seat from the rear on the right side shuffling, who appeared to be putting something under his seat.
16. On Mr. Duncan's instructions, the passengers and crew members all alighted from the bus with Allan Currie being one of the first persons to come off the bus. Less than five (5) seconds after Mr. Currie came off the bus, Mr. Duncan says he sent Mr. Phipps into the bus to see what was thrown on the floor and to make a thorough search of the bus. Mr.

Police Station. He further denied that any of the passengers were beaten or that he had witnessed anyone being beaten by members of the police party that night or at all.

22. Under cross examination, Mr. Duncan admitted that the passenger Barrington Taylor who had pointed out the Claimant as one of the men with a firearm, did not give evidence at the preliminary enquiry. He further admitted that it was his evidence and that of Mr. Phipps that assisted in sending the murder charge against Mr. Currie to the Home Circuit for trial.
23. The evidence of Inspector Michael Phipps is that he was a member of the police party that night and he was the one who searched the bus after the passengers had alighted. In his evidence in chief, he stated that before going on the bus to search it, he recalled seeing Allan Currie "going towards the second seat behind the driver's seat and appear as if he was placing something underneath the seat." This witness stated that at that time, the bus had just come to a stop and he (Mr. Phipps) was on the sidewalk facing the left side of the bus on which the door was located.
24. He testified that on carrying out his search of the bus, he recovered a

two (2) men who were in possession of the guns. He also proceeded to identify the specific gun that each man had in his possession, as he stated that he was not going to jail for any gunman.

19. That individual went on to say that those two (2) men posed with their guns on the bus and the passengers thought they were policeman until they attempted to rob the passengers. When they saw the police road block, one sat down and the other threw his gun to the ground. Both men denied knowing anything about the guns found in the bus.
20. All the passengers in the bus that night were transported to the Central Police Station. Mr. Duncan testified that he charged Allan Currie and Garfield Pusey with illegal possession of firearms and ammunition. Subsequently, investigations carried out by other police officers revealed that one of the weapons recovered had been stolen from a murder victim earlier that day and Mr. Duncan admitted that he informed the investigating officer that Allan Currie was found in possession of that firearm.
21. Mr. Duncan also admitted that Allan Currie was taken before the Court about one month to five (5) weeks after his initial arrest. He however emphatically denied that he or any other police officers was involved in any beating of Mr. Currie at National Heroes Circle or at the Central

26. It is in these circumstances that Allan Currie filed this action against the Attorney General claiming damages for assault, false imprisonment, malicious prosecution as well as aggravated and/or exemplary damages arising out of the actions of the police officers in the execution of their duties as servants or agents of the Crown.
27. The primary issue the Court has to consider is that of credibility. Both versions of what took place on the night of the 16th October, 1987, as described by Allan Currie on the one hand and by the two (2) police officers on the other cannot be correct. The burden of course rests on the shoulders of the Claimant to satisfy the Court, on the balance of probabilities, that the evidence adduced is sufficient to entitle him to a Judgment in his favour.
28. Counsel for the Defendant, Mr. Cochrane in his closing address quite frankly, and correctly in my view, conceded that the period of imprisonment of Allan Currie from the 16th October, 1987 to the 13th November, 1987, when he was first taken before the Court was unreasonable. I will therefore address the quantum of damages to be awarded as compensation for this false imprisonment later in my Judgment.

9 mm semi automatic pistol under the second row seat behind the driver, which he handed over to Mr. Duncan. In continuing the search, he also recovered a .38 Smith and Wesson revolver which he also turned over to Mr. Duncan. His evidence is that Mr. Duncan examined and removed ammunition from the firearms and thereafter made enquires of the passengers concerning the weapons. Mr. Phipps went on to testify that 'there and then' a passenger who gave his name as Barrington Taylor pointed out Allan Currie and Garfield Pusey and said:

“a fi dem man deh gun. Me nah go ah jail
fe no gunman.”

Mr. Phipps says he thought the men were standing on the sidewalk when they were pointed out and could not recall whether passengers were put to lie down on the ground at anytime at the National Heroes Circle.

25. Mr. Phipps denied having a rifle that night or that he beat or witnessed anyone beat Mr. Currie or any of the passengers at National Heroes Circle. He also denied seeing any police officer assault or threaten Allan Currie, either at the scene where the bus was stopped or at the Police Station.

Currie and the other man were pointed out. Despite this evidence, Mr. Phipps in answer to a question from the Court could not recall any passengers being placed to lie on the ground at any time that night.

30. Apart from these inconsistencies, I find it difficult to accept Mr. Duncan's evidence that he saw the Claimant rush from the front of the bus towards the rear and throw something on the floor two (2) seats behind the driver. At the time Mr. Duncan signalled the bus driver to stop, he was standing in the middle of the road as the bus approached the police road block. While standing in the road, Mr. Duncan gave the bus driver certain instructions, but it was not until the bus pulled over to the left side of the road and came to a stop that he observed the manoeuvre of the passenger. Mr. Duncan admitted that while standing in the road, the base of the bus window would reach his eyes. However he also gave evidence that when he saw the male passenger rush towards the rear of the bus, he was by that time standing on the sidewalk and the bus had come to a halt. If this evidence is to be believed, it would mean that a person with an illegal firearm, standing at the front of a bus which was being stopped at a police road block, would have waited until the bus was stopped by an officer standing in the middle of the road, waited until the bus driver pulled over to the left

29. In carefully examining the evidence given by the witnesses in this matter, I am struck by certain inconsistencies, not necessarily between the testimony of Allan Currie and the police officers, which is to be expected, but between the evidence of the officers themselves. Both Allan Currie and Mr. Duncan testified that Mr. Phipps, after conducting the searches of the bus and recovering the two (2) loaded firearms, removed the ammunition and handed the rounds of ammunition and the weapons over to Mr. Duncan. Mr. Phipps' evidence however is that on discovering the weapons, he handed them over to Mr. Duncan and it was Mr. Duncan who removed the ammunition. Mr. Duncan gave evidence that after the guns were recovered and he enquired of the passengers, who were the persons in possession of the said guns, there was some reluctance in obtaining any responses from the passengers. Mr. Phipps on the other hand stated that when enquires were made of the passengers concerning the firearms, "then and there" a passenger who gave his name as Barrington Taylor identified Allan Currie and Garfield Pusey as the men in possession of the guns, apparently with no hesitation. Mr. Phipps also stated that when the men were pointed out they were standing on the sidewalk. However Mr. Duncan's evidence is that the male passengers were lying on the sidewalk when Allan

32. It is interesting to note that Mr. Duncan, while standing on the sidewalk on seeing Allan Currie carry out this manoeuvre, stated under cross examination that he asked Allan Currie what he had thrown on the floor. He also stated that he again spoke to Mr. Currie while he was one of the first persons coming off the bus. No suggestion of any such conversation was ever put to Mr. Currie when he was giving his evidence.
33. What makes the scenario painted by the testimony of these police witnesses even more incredulous is that despite both these officers seeing Mr. Currie rush towards the rear of the bus and throw something at a certain spot behind the bus driver's seat, at which spot a firearm was recovered, he was not detained as a result of what they observed. Instead it is Mr. Duncan's evidence that he asked the passengers which of the persons in the bus had the weapons. As he did not get a response, he made the male passengers lie on the ground. If both officers had seen Mr. Currie act as they had described, why wasn't he removed from the group and questioned? Why weren't his fingerprints taken and the firearms checked to ascertain whether there was any forensic evidence which would link Mr. Currie to one or other of the firearms. Mr. Duncan's answer when asked by the Court whether he

side of the road and waited until the bus came to a halt surrounded by officers of the law and then rush towards the rear of the bus and throw the offending item two (2) seats behind the driver. The effect of this 'rush' by the passenger towards the rear of the bus and his throwing of this object caused it to end up only two (2) seats behind the driver. When the said passenger alighted as ordered by the police, on Mr. Duncan's evidence, he was one of the first to come off the bus. Yet this was the man seen rushing towards the rear of the bus, which had about twenty-five (25) passengers. And less than five (5) seconds after he disembarked, Mr. Duncan says he sent Mr. Phipps on to the bus to see what had been thrown on the floor. Could all the passengers have stepped off the bus in that time for a search to have been conducted? I think not.

31. I find this evidence of Mr. Duncan not only unlikely and improbable but also incapable of belief. And yet similar evidence was given by Mr. Phipps as to what he observed when the bus came to a stop. While standing on the sidewalk facing the left side of the stationary bus, Mr. Phipps recalled seeing Allan Currie rushing towards the rear of the bus and placing something beneath the second seat behind the driver's seat, the very same spot at which he located one of the firearms.

35. On the issue of malicious prosecution, Counsel Mr. Cochrane argued that the servants of the Crown, in accordance with Section 13 of the Constabulary Force Act had a duty to preserve the peace, to detect crime and to apprehend persons whom they reasonably suspect of having committed an offence. He argued that on the evidence, the officers acted properly that night in arresting and charging Allan Currie with illegal possession of firearm and ammunition. He also referred to Section 33 of the Constabulary Force Act which reads:-

“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.”

Counsel went on to argue that a party suing the Crown for the actions of any Constable had a statutory hurdle to clear in order to be successful, in that he had to allege **and** prove that the actions complained of were performed without reasonable or probable cause, failing which Judgment would be entered in favour of the Defendant.

36. Mr. Cochrane also cited a passage from Halsbury's Laws of England Volume 45, 4th Edition, paragraph 1348 under the subhead “Essentials

gave instructions for the guns to be tested for fingerprints was that other persons held the guns, including Mr. Phipps and himself. However Mr. Phipps stated that because of his training, he took care in handling the firearms by holding the trigger guard.

34. Taken separately, these instances may not seem to be of much moment. Viewed collectively however and when contrasted with the evidence of the Claimant, they lead me to the conclusion that the police officers were less than truthful in giving evidence as to what took place that night. I find that Allan Currie gave his evidence in a frank and forthright manner and where there were any conflicts in the evidence of Mr. Currie and the police officers, I accept the evidence of Allan Currie. I accept as truthful Mr. Currie's evidence that he and other passengers were beaten at National Heroes Circle by officers of the Crown in their attempts to find out who were the persons in possession of the firearms found on the bus. I also accept his evidence that he was beaten at Central Police Station as he alleged. I reject the testimony of Mr. Duncan and Mr. Phipps as to the movements of Mr. Currie on the bus and find that evidence to be fabricated. The Attorney General is therefore liable to Allan Currie with respect to the claims for assault and false imprisonment.

of the action for malicious prosecution”, the relevant portions of which states:-

“To succeed in an action for damages for malicious prosecution a plaintiff must prove

- (1) the prosecution by the defendant of a criminal charge against the plaintiff...
- (2) that the proceedings complained of terminated in the plaintiff's favour.
- (3) that the defendant instituted or carried on the proceedings maliciously
- (4) that there was an absence of reasonable and probable cause for the proceedings; and
- (5) that the plaintiff has suffered damage.’

While conceding that the Claimant had proven that a prosecution had been instituted against him which terminated in his favour and that he suffered damage, Mr. Cochrane submitted that Allan Currie had failed to show that Mr. Duncan acted maliciously **and** without reasonable and probable cause and therefore his claim for damages for malicious prosecution ought to be dismissed.

37. The best response to that submission can be found in the dicta of Forte J.A. (as he then was) in the case of **Peter Flemming vs. Det. Sgt. Myers and The Attorney General** (1989) 26 JLR 525 at 535, where he opined,

“In respect of the claim for malicious prosecution something ought to be said.

In the case of *Glinski vs. McIver* (1962) 2 W.L.R. 832 at page 856, Lord Devlin in his speech affirmed that at common law in order to succeed in an action for malicious prosecution:

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

However, by virtue of section 33 of the Constabulary Force Act (*supra*) in Jamaica, a plaintiff suing a police officer for malicious prosecution as a result of an act done in the execution of his duty is required to prove that the Defendant acted *either* maliciously *or* without reasonable or probable cause.”

By virtue of the statute, a Claimant can succeed if he shows **either** malice **or** the lack of reasonable or probable cause on the part of the police officer in prosecuting or carrying on the prosecution of the Claimant. This interpretation was also accepted by Sykes J. (Ag.) (as he then was) in the unreported case of **Kerron Campbell vs. Kenroy Watson and Attorney General of Jamaica**, Suit No. CL. C-385 of 1998, decided on the 6th January, 2005.

38. It is the testimony of Mr. Duncan that based on the evidence concerning illegal possession of firearm and ammunition given by Mr. Phipps and himself at the preliminary enquiry, the case against Mr. Currie on the charge of murder was sent to the Home Circuit for trial. The witness Barrington Taylor did not give evidence at the preliminary

enquiry. It is contended by Counsel for the Defendant that the arrest and charge of Allan Currie was based on the report received from Barrington Taylor that he, Mr. Currie, was one of the men who had a firearm. I have accepted as truthful, Mr. Currie's evidence as to what took place that night at the National Heroes Circle and Central Police Station. I find that the male passengers were placed on the ground and some, including the Claimant were beaten by police officers as they tried to ascertain who were the men in possession of the two (2) firearms. I accept that while this beating was going on, one of the passengers, Barrington Taylor stated he was not going to prison for any gunman. Were I to accept that Mr. Taylor pointed to Allan Currie as one of the men with a firearm that night, which I do not, I am of the view that any such identification in circumstances where men were being beaten for them to identify wrongdoers, would not without more amount to reasonable or probable cause for detention or prosecution for a criminal offence.

39. It was the charge of illegal possession of the firearm which was used in the commission of a murder that led to the charge of murder being laid against Allan Currie. And it was the testimony of the police officers Mr. Duncan and Mr. Phipps, as to what they observed Mr. Currie doing

on the bus, which testimony I find to have been concocted, that provided the crucial link with respect to the murder charge. I find on the facts of this case that the prosecution of the criminal charges against Mr. Currie was without reasonable or probable cause. I also find that the officers acted maliciously in the prosecution of the charges against Allan Currie in that they formed the view that he was a 'bad man' because of the clothes and Clarke shoes he was wearing. They therefore manufactured a tale to conceal their actions of beating the Claimant by charging him with illegal possession of firearm. They further maintained that falsehood by testifying against him at the preliminary enquiry as well as at the murder trial. I am satisfied therefore that Allan Currie is entitled to compensation with respect to his claim for damages for malicious prosecution.

Special Damages

40. The only item claimed as Special Damages is that of Loss of Earnings for the period 16th October, 1987, the date Allan Currie was detained by the police to 1st January, 1991, when he obtained employment at Joy's Wholesale. After the murder charge was dismissed on the 19th April 1989, Mr. Currie was released on bail on the 4th May, 1989 and the charges in the Gun Court were dismissed on the 9th June, 1989. Mr.

Currie gave evidence that on being released from custody, he discovered that his former employers were carrying out a redundancy exercise at the business place, but he was not entitled to any such payment as at the time he was not working with them. It is understandable that after the traumatic experiences of being imprisoned for nineteen (19) months and facing the criminal proceedings laid against him, it would not be easy for Allan Currie to get back into the labour market. I am satisfied that the period claimed was not unreasonable and that the Claimant is entitled to Loss of Earnings in the sum of **\$40,000.00**.

General Damages

41. There is no dispute in this matter over the period of false imprisonment, which was agreed at twenty-nine (29) days. No such consensus however could be arrived at on the question of the quantum of damages to be awarded. Mr. Cochrane cited two (2) unreported cases which he submitted could be of assistance. In the first case of **Clinton Bernard vs Special Constable Paul Morgan and Attorney General of Jamaica**, Suit No. CL. B-023 of 1991, McCalla J. (as she then was) on the 9th June, 2000 awarded \$20,000.00 per day as damages for false imprisonment over a period of six (6) days. In the

other case of **Winston Simpson vs. The Attorney General for Jamaica and others** Suit No.CL. S-144 of 1993, McDonald J. (Ag.) on the 10th May, 2002 awarded the Plaintiff \$7,000.00 per day for false imprisonment over a period of 120 days. Mr. Cochrane advanced the proposition that the Consumer Price Index (CPI) is not generally applied to a case of false imprisonment. He therefore submitted that the average of the two (2) daily rates utilized in the cases cited be taken and applied in the present case. This would amount to \$13,500.00 per day for twenty-nine (29) days making a total of \$391,500.00.

42. Mr. Cochrane's contention that the CPI is not to be applied to cases of false imprisonment is devoid of authority or logic. The purpose of applying the CPI is to arrive at a present day value of an award made some time in the past. Applying such a formula provides a degree of consistency in awards handed down where the circumstances of the respective cases are similar. This enables the court to reflect upon a range of figures in attempting to arrive at reasonable compensation after considering the particular circumstances of the cases before it. I do not therefore accept Counsel's contention that awards in false imprisonment cases ought not to be updated using the CPI.

43. Counsel for the Claimant referred to several cases in support of his contention that an award of \$1,000,000.00 would be adequate compensation to his client for the twenty-nine (29) days he was detained without being brought before the Court. The difficulty is that the documents submitted to support such a proposed award were Statements of Claim, Final Judgments and in one instance a Minute Order copied from Court files. There were no written Judgments with respect to the cases cited. The Court was left to infer that the periods of imprisonment pleaded in the respective Statements of Claim were accepted by the trial Judge, which is not necessarily so. In my view, this is not satisfactory and those references provided little assistance.
44. The case of **Abraham Grant vs. The Attorney General** Suit No.CL.1988/G-021 consolidated with Suit No.CL.1988/G-022 involving similar parties was of some guidance to the Court. On the 10th October, 1994, Harrison J. (Ag.) (as he then was) assessed damages for false imprisonment for a twenty-eight (28) day period in the sum of \$100,000.00. That award updated to today's value would be approximately \$400,000.00. In considering the circumstances of the present case, I am of the view that the sum of **\$500,000.00** would be a reasonable amount to award as damages for false imprisonment.

45. Counsel for Mr. Currie, on the claim for damages for malicious prosecution, highlighted the fact that the serious charge of murder was laid against his client and he was kept in custody for a period of 510 days, from the 13th November, 1987 until the 27th April 1989. Some of the conditions to be borne in mind when assessing this head of damages would be the length of the time over which the malicious prosecution lasted, the number of times the individual attended Court, the nature of the offence or offences for which the Claimant was prosecuted, as the more serious the charge, the greater the amount likely to be awarded. Mr. Cochrane on behalf of the Defendant suggested a figure of \$120,000.00, while Counsel for Allan Currie approached the award from the other end the spectrum and submitted as appropriate the sum \$12,750,000.00, arrived at by using a figure of \$25,000.00 per day.
46. In the case of **Linnette Vassell and Cyril Vassell vs. the Attorney General** Suit No.CL. 1989/V-013, the Court on the 19th January, 1996 awarded Mrs. Vassell \$600,000.00 for false imprisonment and malicious prosecution in circumstances where she was imprisonment for almost two (2) weeks before being taken to Court. Thereafter, two months passed before the charges against her were dismissed. That updated award at today's rate amounts to approximately \$1,600,000.00.

The circumstances of the present case are far more serious. Seventeen (17) months of a man's life were taken away by the actions of the officers of the law. To the very end, the prosecution was vigorously pursued and in respect of neither of the offences was the Claimant called upon to answer the charges. In view of these circumstances, I am of the opinion that any award of compensation ought to include a sum for aggravated damages.

47. Mr. Currie testified that his family life was affected due to his being in custody while awaiting the completion of the Court proceedings. He was extremely concerned about his baby mother and his three (3) sons with whom he had been living, as he was the sole bread winner. He felt at times that he was going crazy, wondering what the next day would bring and sometimes he wouldn't eat. After being acquitted of all charges, he had to face the trauma of unemployment and it took sometime for him to obtain another job. Bearing all these circumstances in mind as well as the considerations previously referred to, particularly the seriousness of the offences for which he was charged and the length of time to have the matters finally determined, I find the Claimant entitled to an award of **\$2,000,000.00** as damages for malicious prosecution as well as aggravated damages.

48. I accept Mr. Cochrane's submission that no award ought to be made with respect to the claim for Exemplary Damages, as any such claim ought to have been specifically pleaded together with the facts relied on - see **The Attorney General and Constable David Lue vs. Noel Gravesandy** SCCA No. 3 of 1980.

49. I have accepted the evidence of the Claimant that he was beaten by the police officers at the National Heroes Circle and Central Police Station. The Particulars of Injuries as pleaded in the Statement of Claim indicate:

1. Laceration on right forehead.
2. Swelling under both eyes
3. Broken left upper tooth which had to be extracted
4. Multiple swelling and bruises

When one considers the length of time Allan Currie was in custody before being released in 1989, the absence of a medical report as to most of the injuries are understandable. The obligation however still rests on a Claimant to prove his loss. With respect to his allegation that a broken tooth had to be extracted, a visit to a dentist after release from custody would have confirmed the fact of the extraction and thereby provided the Court with some evidence of that which had been alleged.

In the absence of such evidence, I am not prepared to award any damages concerning the alleged broken tooth and extraction.

50. I have found the case of **Hugh Douglas vs. Morris Yap and others**, reported in Mrs. Khan's Book on Damages, Volume 4 at page 210 helpful as the injuries are similar. The award of \$140,000.00 handed down for personal injuries in that case in April, 1994, would translate to approximately \$540,000.00 at today's rate. I consider the sum of **\$550,000.00** adequate compensation as damages for assault in this matter.
51. Judgment is awarded in favour of the Claimant against the Defendant as follows:-

<u>Special Damages</u>	-	\$ 40,000.00
<u>General Damages</u>		
False Imprisonment	-	\$ 500,000.00
Malicious Prosecution &		
Aggravated Damages	-	\$2,000,000.00
Assault	-	<u>\$ 550,000.00</u>
		\$3,090,000.00

Interest is awarded on Special Damages at the rate of three percent (3%) per annum from the 16th October, 1987 to the date hereof.

Interest is awarded on the General Damages at the rate of three percent (3%) per annum from the 22nd September, 1989 to the date hereof.

Costs to the Claimant to be taxed if not agreed.