

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 2001/E 025

BETWEEN

MICHAEL EMANUEL

PLAINTIFF

AND

THE ATTORNEY GENERAL FOR JAMAICA

DEFENDANT

Mrs. Arlene Harrison-Henry for Plaintiff

Ms Analessa Lindsay and Mr. Garfield Haisley for Defendant, instructed by the
Director of State Proceedings.

Heard: 7th October, 2003, 8th October, 2003 and 24th October, 2003

CORAM: D. McIntosh J.

PLAINTIFF'S CASE

The Plaintiff's case is that on the 20th April, 1999; he lived at 17 Hampton Green in Spanish Town. He then worked as the manager at Agnes Snack, a 24-hours a day, cook shop, situated at 17 William Street also in Spanish Town. He was also

a self-employed salesman who sold Wrigleys, banana chips, cigarettes and other little items in the Spanish Town area.

Angies Snack is owned by Enrodd Pitt who paid the Plaintiff \$20,000 per month cash for his duties as manager. From his sales around Spanish Town, Plaintiff earned about \$15,000 to \$20,000 per month, also in cash. He paid no taxes. He presently works at the First Union Financial Company as a Bailiff and a Valuator and resides in Mandeville.

About 10:00 p.m. on the night of the 20th April, 1999 while Plaintiff was at Angies Snack, at work, sitting on a chair, outside at the front of the premises on a paved area, he saw a group of about 9 policemen on the left side of William Street coming from the direction of Cumberland Road.

When they reached Angies Snacks, they began to beat from left to right. The police party was led from the front by Superintendent Renato Adams.

They entered onto the paved area to the front of Angies Snack. There were customers at this section as also inside the shop. The police began to beat all the customers, calling them thieves (using expletives). Some of the customers ran inside. Plaintiff was still sitting there. A customer, who was inside having his meal, was beaten, so he ran.

Plaintiff identified himself to Mr. Adams who accused him of being an instigator and a harbourer of criminals and he was told to lock up the place. Plaintiff endeavoured to comply. He ordered Enroy Pitt to take up the chairs, which were in front, and he (Plaintiff) went inside and held onto the shutters to close the business place.

While holding onto the shutters Plaintiff tried to explain to Mr. Adams that the place was a legitimate business place where thieves and criminals were not harboured. He was kicked twice in the side by Mr. Adams. As a consequence the shutters came down and the business place was closed.

All the police outside then began to beat down the place telling those inside to open up. He and Enrodd Pitt both lifted up the shutters. Mr. Adams held onto his shirt saying he had too much mouth. He held onto the collar of Plaintiff's blue tee shirt, draped it, and tore it off, as also his merino. These he valued at \$400.00.

A corporal of police held onto Plaintiff's neck and used his baton several times to stab him in his neck.

Plaintiff felt a lot of pain from the kicks to his side and the baton stabs to his neck. His neck was swollen and he could not sleep because of the pain and the remembrance of the incident. This pain was felt for about one week. He remembers and feels the pains to this day as if it's a nightmare.

He got a month's leave from work, without pay and did none of his selling of cigarettes, Wrigleys and such items. As a result of his injuries his doctor sent him to do an X-ray. He went to the doctor on the 22nd April, 1999. Between the 20th and 22nd April 1999 he did not go to the hospital or a doctor. He remembers the doctor as Doctor Chin. He thinks he paid him \$1,000 and got a receipt.

On the 8th June, 1999 he did the X-ray. The result of which he took to Dr. Chin, who told him that the X-rays did not reveal any thing wrong with him. He

saw Dr. Chin twice in relation to his injuries. This was on the 20th April, 1999 and the 8th June, 1999.

Plaintiff did not return to work at Angies. Each time he went there he was mocked and jeered so he could not stay there, as he was scared and embarrassed. He had to migrate to Manchester. It cost him \$8,000, which he paid a friend to move him.

After the incident at the shop on the 20th April, 1999, Plaintiff walked home without shoes. On the 26th April, 1999 he went to Police Complaints Department to lodge a complaint against Renato Adams and the police about the assault. He had first gone to the Spanish Town Police Station to do so but they refused to take a statement and advised him to go to the Complaints Department. Later same day he did so.

On the basic issues that incident took place at night, that plaintiff was kicked by Mr. Adams and hit in the neck by another police officer, witness Enrodd Pitt corroborated plaintiff's evidence.

DEFENDANT'S CASE

The Defendant through its sole witness, Snr. Superintendent Renato Adams contradicted the Plaintiff's case.

He gave evidence that he led a party of police to premises at 17 William Street on the 20th April, 1999 at about 5:00 p.m. He was armed with a search warrant to search for drugs.

At premises they attempted to enter shop. Plaintiff was seen pulling down a shutter to the building, he was told to desist and told about the search warrant. Instructions were given to another police to read warrant.

When warrant was being read he saw the plaintiff moving towards door of shop. Two officers were told to restrain him. The Plaintiff forcefully twisted and pulled away from the officers. In the struggle Plaintiff hit against concrete table, door uprights and grilling and escaped and ran away. He was chased but managed to escape and was not found by Mr. Adams on his subsequent visits to effect an arrest on warrant.

The premises were searched and alcoholic beverages were removed there from.

Mr. Adams maintained that he did not kick plaintiff nor did he see anyone kick him nor hit him with baton. Any injuries plaintiff may have received could have been caused by his struggle with the police who tried to prevent him leaving the premises or any time after the incident. That witness Enrodd Pitt was not present on the premises at the time of incident. Plaintiff was not personally known to him before the incident except by observation.

DEFENDANT'S SUBMISSIONS

Ms Lindsay submitted that court should find on a preponderance of the evidence that Plaintiff had not proved his case.

That section 33 of the Constabulary Force Act has not been complied with.

That claimant's evidence at the trial is not credible; he failed to prove by any medical evidence that he sustained injuries on the 20th April, 1999.

He failed to prove any of the expense in his claim for Special Damages and did not plead any of the expenses of which he gave evidence.

While plaintiff claims damages for:

Assault and Battery

Trespass

Malicious Destruction of Property,

He has adduced no evidence whatsoever of any trespass as he was never entitled to any possession of the premises. There is no breaking or forceful entry to premises; therefore, any claim in trespass must fail.

The claim for Assault and Battery when looked at has not been proven as a matter of credibility. The police had only lawful contact with the claimant before he fled the premises when they went there to execute a search warrant.

Similarly, plaintiff has not proved that any of his property was destroyed.

Court is asked to consider the inconsistencies in the plaintiff's evidence as brought out by cross-examination and that of plaintiff's witness Mr. Pitt.

That Plaintiff has not proved any of the circumstances set out in his application for Exemplary or Aggravated Damages.

The plaintiff and his witness both said that everyone fled from the premises upon seeing the police so there would be no one there to witness the alleged assault.

Plaintiff claimed he had relocated because of the embarrassment from the jeering of people at his workplace, a place that on his evidence he only returned to for 15 minutes at the beginning of June, 1999.

He pleaded in his Statement of Claim that he was forced to close his lawful business yet in his evidence he maintained that the business was not his.

Even the address, which he gave in his evidence, his witness said he did not know of him living there.

Plaintiff's evidence as to the pain he suffered was contradictory. Initially the pain lasted one week, then the pain was there when he took an X-ray on the 8th June, 1999. Then while giving evidence the pain was still there. There is no evidence that Plaintiff continued to receive medical treatment for the pains; while the doctor who reviewed the X-rays told him there was nothing wrong with him.

If Court finds in Plaintiff's favour then court should remember:

Murphy v. Mills

1926 – 14 J L R – 119 that speaks to special damages being specifically proven.

In relation to General Damages, it is plaintiff's evidence that his neck was swollen and he had pains in his side and his neck. He also gave evidence of shame and embarrassment.

In

Francis v. Nicholson

Suit C. L. 1985/F 1231

Heard 13/5/99

In Harrison's page 85

The reward for pain and suffering would today be \$77,527,00.

In

Yee v. Gray

C.L. 1989/Y011 heard June 1990

Harrison page 204.

Award today would be \$61,000.00

Counsel asked that no consideration be given to Exemplary Aggravated Damages.

See

Attorney General v. Maurice Francis

SCCA 13/95 page 19.

PLAINTIFF'S SUBMISSIONS

On behalf of the Plaintiff, Mrs. Arlene Henry Harrison accepted the submissions, of her colleague as they related to Trespass and Exemplary Damages and submitted that the only issue before the court was whom the court believes i.e. the issue is of credibility.

She admitted that Plaintiff had given contradictory evidence in respect of the claim but when this is compared to Crown's evidence the central fact is that Plaintiff was assaulted without reasonable or probable cause.

She admitted that there is no medical or doctor's evidence. There is oral evidence from plaintiff and his witness to establish assault and battery on a balance of probabilities.

She would resile from Exemplary Damages but submit that this would be a proper case for Aggravated Damages even if no patrons were there, there were workers there and plaintiff was the manager.

The Defence is preposterous as in its amended form it states that plaintiff was first blocked by one officer and then by a second as he sought to escape.

It can be inferred from the failure to produce the warrants that they never existed.

In relation to Special Damages the plaintiff was paid in cash, got no receipt and no taxes was paid. The Court is asked to accept his evidence that he was earning this salary.

If court finds for plaintiff, court should accept that he paid the doctor and paid for the X-ray.

Further, the authorities presented by defence attorney are appropriate but should be topped up to about \$120,000 to bring into consideration an award for aggravated damages.

COURT

Having carefully observed the demeanour of the witnesses, the evidence in its totality and given due consideration to submissions of counsel, this court found that the plaintiff had not proved his case on a balance of probabilities. As a consequence the plaintiff's case was dismissed with costs to the defendant.

Section 33 of the Constabulary Force Act was specifically pleaded by the plaintiff, but he failed to prove this evidentially.

Plaintiff lacked credibility and to a lesser extent, so did his witness. Plaintiff contradicted himself in chief, under cross-examination and was contradicted by his witness.

The address he gave as his residence while he lived in Spanish Town was the same address as that given by his witness Evrodd Pitt. Pitt when pressed by the Plaintiff's attorney, after he informed court that plaintiff had never lived at that address, affirmed that he did not know of any address in Spanish Town where Plaintiff ever resided. Pitt had earlier corroborated plaintiff's evidence that plaintiff had migrated to Manchester.

It would seem that his claim to have resided at the home of Mr. Pitt whom he claims employed him as manager of his business was as false as his pleadings, which indicated that the business at 17 William Street, St. Catherine, belonged to him as also his claim in trespass.

There were at least two instances during the examination of plaintiff when he broke down in tears because of the pain he still felt from the assault to his person on the 20/4/99.

That assault he claimed caused him great pain, firstly, for one week, then he expanded to a month during which time he took leave – did no work – was not paid. Then the pain lasted for years – even up to and including trial. This claim seems spurious having regards to the fact that:

- (a) plaintiff walked home without shoes after receiving the alleged injuries.
- (b) plaintiff never sought medical attention before the 22/4/99.
- (c) He went for X-ray about the 8/6/99.
- (d) The doctor found nothing wrong with him when he reviewed the X-ray report.
- (e) plaintiff only visited the doctor once in respect to injuries he claimed to have received.

It was agreed that the plaintiff and the defendant's witness did not know each other before that day [20/4/99]. The police were alleged to have started beating people as they came into William Street and beat left and right as they entered the premises where plaintiff was.

Strangely, neither plaintiff nor his witness, nor any member of staff was then beaten by the police – only customers.

The stated intention of the police was to close the place down, yet after it was closed the same police demanded that they reopen.

No doubt the police wanted to reopen premises just so they could beat the plaintiff.

The plaintiff's evidence was that all the police officers were armed with long guns, which they held with both hands. This was demonstrated. Perhaps these long guns became batons because Pitt had all police officers carrying batons.

Discrepancies were rife and they were pertinent to fundamental issues which plaintiff needed to prove.

The defendant's case was straightforward. It covered all the material issues and was more probable than plaintiff's case.

In fact it clearly demonstrated a reason why plaintiff would have stopped going to that business place if he knew the police had a warrant out for his arrest.

To counter the warrant, defence attorney suggested that plaintiff had seen the defence witness several times after that at the Spanish Town Bus Depot and had called to him. One would have thought that in light of plaintiff's evidence about the injuries meted out to him by the defendant's witness and the embarrassment, which he suffered as a consequence, it would be hardly likely that he would call to Mr. Adams or be friendly towards him.

Costs awarded to the Defendant, was \$88,000.00.