



[2025] JMSC Civ.59

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2017HCV02745

BETWEEN JOHN GREEN

CLAIMANT

A N D DESNOES AND GEDDES LTD.
T/A RED STRIPE

1ST DEFENDANT

A N D CONSTABLE O'SHANE WILLIAMS

2ND DEFENDANT

A N D THE ATTORNEY GENERAL

3RD DEFENDANT

Mr. Leroy Equiano for the Claimant

Ms. Giselle Campbell instructed by Patterson Mair Hamilton for the 1st Defendant

Ms. Karessian Gray and Mr. Romario Miller instructed by the DSP for the 3rd Defendant

HEARD: April 1, 2, and 3 and May 9, 2025

Tort – Malicious Prosecution – Whether or not the 2nd Defendant had reasonable and probable to prosecute the Claimant for the offences charged.

Tort – False Imprisonment – Whether or not the 2nd Defendant lawfully arrested and detained the Claimant – Whether or not the length of time for which the Claimant was held before being considered for bail or before facing the Court was unreasonable.

DALE STAPLE J

BACKGROUND

[1] The Claimant was a former employee of the 1st Defendant (now Celebrations Brand Limited). He was employed at the time of the alleged incident giving rise to

the claim as a Settlement Officer in the Finance Department (my phrase). He worked at the Kingston Distribution Centre at the time of the incident.

- [2] He was at work for the week ending August 9, 2013; He was on the evening shift for that week. According to the Claimant on the 7th August 2013, he reported for work and performed part of his duties by preparing the preliminary lodgment report and the Guardsman Customer Receipts using data from the “Lodgment Received For” forms. He said he left the bags of cash in the vault with the supporting documents.
- [3] Later that day, he claimed he suffered an asthma attack and left work urgently to go to the Kingston Public Hospital to get treatment. He was treated and released but the following day, he claimed he was experiencing a high fever and a cough and reported sick. On August 9, 2013, he submitted a sick leave certificate for 10 days' sick leave.
- [4] According to the 2nd Defendant, the 1st Defendant, on the 14th August 2013, made a complaint to the Fraud Squad of the Jamaica Constabulary Force concerning the theft of some 7 bags of money amounting to over \$10 million. As a consequence, an investigation was initiated by the Jamaica Constabulary Force (JCF) into the allegations of simple larceny and falsification of accounts.
- [5] On the 19th August 2013, the Claimant asserted that he went to the Credit Union located at Red Stripe to collect a cheque from them that he had requested. Upon exiting the taxi to go into the credit union, he was accosted by two persons, who turned out to be police officers, one of whom was a female. He fled from them, but was eventually apprehended. He said he was arrested and taken to the Hunts Bay Police Station Lock Up.
- [6] Eventually, on the 22nd August 2013, he was charged with the offences of Simple Larceny (for having stolen 7 bags of money amounting to \$10,396,147.00) and Falsification of Accounts. He was put before the Corporate Area Criminal Court at

Half-Way-Tree on the 28th August 2013. He was eventually offered bail on the 20th September 2013.

- [7] His prosecution continued until the 5th April 2016, when the Crown offered no evidence against him on both counts and he was discharged from the offences.
- [8] The Claimant has now sued the 1st Defendant and the 3rd Defendant for the torts of Malicious Prosecution and False Imprisonment.
- [9] For their part, the 1st Defendant has strongly denied the claims against them. In summary, they contend that they never falsely imprisoned the Claimant nor were they the persons responsible for the prosecution of the Claimant.
- [10] The 3rd Defendant's contention is that they did not falsely imprison the Claimant and that the investigating officer had an honest belief that the Claimant was probably guilty of the offence at the time of charging the Claimant and so there was no malicious prosecution.

Malicious Prosecution

- [11] The law in this area is well known and well-trod. Both Counsel have submitted admirably in terms of the law and what needs to be established. I will only rely on a previous case of mine (cited by both Counsel) of ***Foster v AG of Jamaica***¹, which set out what a Court should look for to see whether the Claimant has established the tort of malicious prosecution.
- [12] Aside from the law being set in motion against the Claimant and the prosecution ending in his favour, the question then becomes whether the prosecutor had an honest belief in the Claimant's guilt before setting the law in motion. The considerations when examining this question of honest belief are:

¹ [2023] JMSC Civ 83

- a) An honest belief (held by the prosecutor) that the accused is guilty;
- b) This honest belief is based on a full conviction found on reasonable grounds;
- c) These grounds are a state of circumstances which, if true, would lead an ordinarily prudent and cautious man to believe that the accused is probably guilty (not guilty beyond reasonable doubt).
- d) The belief is that of an ordinary prudent and cautious man.

[13] It is of note that there is no dispute in this case that the 3rd Defendant's servant and/or agent instituted proceedings against the Claimant and that the proceedings were terminated in the Claimant's favour.

[14] However, it is disputed as to whether or not the 1st Defendant can also have been said to have initiated the prosecution.

[15] In the case of **Warrick Lattibeaudiere v The Jamaica National Building Society et al²**, the Court of Appeal had to grapple with the question as to the circumstances under which the virtual complainant can be considered the prosecutor even when the police have formally laid the charge.

[16] The Court of Appeal found that a complainant can only be found liable for malicious prosecution if it is proven that he falsely made a report against the Claimant or created a situation which he, fully knowing to be untrue, caused the Claimant to be arrested and charged for an offence. The conduct of the complainant must be such that it is shown to have influenced the police in their decision to prosecute.

[17] Similarly, in the case of **Arthur Baugh v Courts (Jamaica) Ltd et al³**, Sykes J (as he then was) held that Courts could only be liable as prosecutor if it can be shown that the police did not exercise any independent judgment when arresting the Claimant.

² [2010] JMCA Civ 28

³ (Unreported) Supreme Court of Jamaica, CL B 099/1997, October 6, 2006, Sykes J (as he then was).

[18] Combining the two then, a private complainant may only be found liable as the prosecutor in circumstances where they have created a situation, which would have led the police to charge the Claimant without the police exercising any independent judgment.

[19] One prime example is where the complainant knowingly gives false information to the police that significantly influences the police to initiate the prosecution. Other examples of the creation of a situation were set out by H. Harris JA in the decision of **Lattibeaudierre**⁴. Harris JA highlighted scenarios such as:

- a) the withholding of key evidence from the police leading them to arrest and charge the Claimant where they otherwise would not have had the evidence not been withheld;
- b) suborning (bribing or otherwise inducing a person to commit an unlawful act e.g. perjury) a witness; or
- c) using some other dishonest means to bring about a meritless prosecution of the Claimant.

False Imprisonment

[20] In the celebrated case of **Peter Flemming v Detective Corporal Myers et al**⁵ it was held that the tort of False Imprisonment arises where a person is detained against his will without legal jurisdiction. The legal justification may be pursuant to a valid warrant of arrest or where, by statutory powers, a police officer is given a power of arrest in circumstances where he honestly and on reasonable grounds believes a crime has been committed.

[21] In the context of establishing this tort against a police constable acting as such, the Claimant must establish that the officer acted without reasonable and/or probable cause or maliciously⁶.

⁴ n. 2 at para 19.

⁵ (1989) 26 JLR 525

⁶ See s. 33 of the Constabulary Force Act.

[22] As always, the Claimant has the legal and evidential burden to satisfy me that both defendants are liable in relation to both torts as he claims and he must satisfy me on the balance of probabilities.

[23] I have read the submissions from all the parties and I am grateful for their industry and their thoughtful arguments. They were all carefully considered.

ANALYSIS

False Imprisonment – Has the Claimant established his case against both Defendants on the balance of probabilities?

The First Defendant

[24] It is my finding that the Claimant has not satisfied me, on the balance of probabilities, that the 1st Defendant falsely imprisoned him or caused him to be falsely imprisoned.

[25] There is no evidence from the Claimant that the 1st Defendant had anything to do with his arrest. They made the complaint about the missing funds to the police, but it was clear, from the evidence of Mr. Williams, that it was the police that took the decision to arrest the Claimant and detain him.

[26] It is my finding that the 1st Defendant had a legitimate basis to make the complaint about their missing money bags. But it was the police who took the independent decision to arrest the Claimant at the time they did. The evidence from Mr. Williams (on re-examination) was that the police had not even planned to arrest him at the time they did. But they simply took advantage of the opportunity that presented itself when they were called to the premises due to the conduct of the Claimant on the day of his arrest.

[27] In those circumstances, the Claimant has failed to show me that the 1st Defendant falsely imprisoned him, and so this aspect of his claim against them fails.

The Second Defendant

- [28] It is my finding that the Claimant has made out his case against the 2nd Defendant for false imprisonment.
- [29] I find that the police did not grant station bail to the accused, but they did not put him before Justices of the Peace for them to consider bail for him and then simply took too long to put the Claimant before the Court for his bail to be considered by the Resident Magistrate (as they then were).
- [30] The evidence is that the Claimant was arrested and detained at the Hunts Bay Police Station Lock Up on the 19th August 2013. This was confirmed by the certified copy of the diary entry exhibited at exhibit 2(vi).
- [31] Thereafter, he remained in police custody until he was charged on the 22nd August 2013. He was not taken to Court until the 28th August 2013 some six (6) days after being charged.
- [32] Pursuant to s. 3(2) of the **Bail Act 2000** (the operational bail legislation at the time), a person who is charged with an offence should not be held for longer than 24 hours without the question of bail being considered. There is evidence from Mr. Williams, at paragraph 13 of his chief, that station bail was denied to the Claimant due to the large quantity of cash involved and his likelihood to interfere with witnesses. He said that the Claimant was remanded, but there is no evidence by whom this was done and if that “remanding” was by a person with lawful authority so to do. The Crown did not elaborate on this issue.
- [33] Mr. Williams said that the administrative policy at the Corporate Area Criminal Court at Half-Way-Tree required that a case file be submitted at least 2 clear days before the Court date. However, this is no excuse to delay the appearance of an accused before the Court for any unnecessary period. Nor is it uncommon for the Court to accept an offender before them for the question of his liberty to be

considered by a Resident Magistrate (as they then were) even if the case file is not ready.

[34] The earliest available court appearance date was the 26th August 2013 (the 24th and 25th being a Saturday and a Sunday, respectively). However, he could have been presented before Justices of the Peace anytime after the 23rd April 2013 for his bail to be considered. There is no evidence that this was done. In the circumstances, I find that the delay of 5 days between charge and first possible Court appearance was unlawful. To some, five days may not seem to be unreasonable. But 5 additional days in custody can be the difference between life and death.

[35] I also find that there was no evidence that the Claimant was properly remanded in custody prior to being taken to Court.

MALICIOUS PROSECUTION

The First Defendant

[36] I do not find that the 1st Defendant was responsible for initiating the prosecution against the Claimant.

[37] There is no evidence from the Claimant that the 1st Defendant gave any false information to the police **at the point of the charge being laid** (emphasis mine). There is also no evidence that the police did not exercise their independent judgment to prosecute the Claimant as a consequence of any circumstance created by the 1st Defendant, their servants and/or agents.

[38] In fact, having read the submissions from the Claimant, it does not appear as though there was much emphasis on the 1st Defendant as the prosecutor.

The Second Defendant

[39] I did not find the 2nd Defendant's witness, Oshane Williams, to be either a credible or a reliable witness.

[40] His narrative of his account left much to be desired. I have factored in the time that has elapsed between the date of the first reporting of the incident (14th August 2013, when the report was first made to the Fraud Squad) and the date when he gave his evidence (2nd April 2025). That amounts to nearly 12 years. That is a long time and memory can fade and there can be distortions.

[41] However, in my view, the witness's evidence was still unreliable even taking the fading of memory into account.

Was He Even the Investigating Officer from the Outset?

[42] In his witness statement, Mr. Williams said, after indicating that he had received a report of alleged fraud from the 1st Defendant company on the 14th August 2013 and had taken a statement from Ms. Wood on the 16th August 2013, said that he commenced investigation into allegations against the Claimant.

[43] During his oral testimony, Mr. Williams repeatedly insisted, on oath, that he had been the investigating officer from the inception of the matter.

[44] This was one of the exchanges in cross-examination:

Ques: (Portions of statement read to witness). Is the statement that you immediately commenced investigation on the 22nd August 2013 true or false?

Ans: It is not true. Because I had commenced the investigation before this date.

[45] When one examines exhibit 2(vi), the Certified Copy of the entry relevant to the Claimant of the *Prisoner in Custody Register* at Hunts-Bay Lock-Up dated August

19, 2013, the day of the Claimant being arrested and taken into custody, the document clearly shows the I/O (investigating officer) as a Det. Cpl Grey of the Fraud Squad.

[46] By that document, he was not the investigating officer. This discrepancy was never pointed out to the witness by counsel for the 3rd Defendant to get an explanation from him and the document was tendered as part of **their** (emphasis mine) case. This represents objective third party evidence that directly contradicts and undermines the credibility of the witness that he was the investigating officer.

[47] Counsel put to him in re-examination his own statement that he gave as part of the criminal investigation.

“In your Witness Statement you said that Mr. Green was pointed out to you on the 19th. In your statement to Half-Way-Tree you said Mr. Green was introduced to you on the 22nd August 2013 by Mr. Laws? Which was it?

Ans: *I had a number of interactions with Mr. Green prior to Half-Way-Tree. **This was evidenced from the diary entries to Hunts Bay Lock Up** (emphasis mine). So I would have been familiar with him from before the 22nd. So when I said in my police statement that he was pointed out to me by Mr. Lawes, it just means he showed me who was Mr. Green.”*

[48] The evidence from *Cell Diary* entry number 43 for Monday August 19, 2013 supports this. At 5:00 pm, the entry lists Mr. Williams as being one of the persons that escorted the Claimant into custody.

[49] Similarly, on the 21st August 2013, Mr. Williams was listed amongst the officers that returned the Claimant to custody.

[50] On the 22nd August, the cell diary entry reveals that it was Detective Cpl Grey as well as Constable Robinson (as driver) that escorted the Claimant to the Fraud Squad in the morning. Later that day, Mr. Williams was listed as the driver of the car that brought the Claimant back into custody at Hunts Bay Lock Up.

[51] In my view, the Claimant played only a supporting role up to the 22nd August 2013 in the case against the Claimant. He was never the investigating officer until the 22nd August 2013, as he stated in his own police statement. The Investigating Officer was initially Det. Cpl. Gray.

What of the Bag Being Thrown Away on Date of Arrest?

[52] In cross-examination, it was put to Mr. Williams that the Claimant throwing away a bag when confronted by the police was essentially a recent fabrication. The witness denied the assertion.

[53] I do not accept that there was any bag throwing away incident. The Court asked Mr. Williams if it was he who did the Q&A with the Claimant and he answered in the affirmative. The Court then asked the witness why it was that the bag being thrown away was never at all raised in the Question and Answer with the Claimant.

[54] This was the exchange that followed:

Ans: The questions asked were based on the statement the statements from Ms. Wood and other information that we had from the persons at Red Stripe.

Judge: But you asked him about being accosted on the 14th August 2014?

Ans: Yes.

Judge: You also asked him about visiting the credit union on that same day [of his arrest] with a person who was his wife?

Ans: It was Mr. Lawes who was asking the questions. Not me.

Judge: So why did you say earlier that you did the Q&A?

Ans: I was not sure what you meant. But I was present at the Q&A.

[55] Firstly, I do not accept that the witness did not understand what was meant by “if he did the Q&A”. Secondly, I found that the witness was clearly caught in a lie.

Again, undermining his credibility or at the very least, making his evidence unreliable.

- [56] A bag being thrown away in a case where you suspect that the Claimant stole bags of cash and he was at a Credit Union, would surely cause one to ask him about the bag being thrown away.
- [57] What is more, there was never any mention of this bag being thrown away in his initial police statement. When asked about this omission by Counsel in Cross-Examination, Mr. Williams freely admitted that he had omitted the statement. No proper explanation was given for its omission and it was never pursued in re-examination. In my view, this omission was significant. Seeing a bag thrown away by a man being arrested on suspicion of larceny of a large portion of cash is an important part of the evidence to support a charge of larceny. To fail to ask about it in a Q&A and to fail to mention it in the police statement certainly causes me to doubt whether such an incident even happened.

Was a Female Officer Part of the Team that Arrested the Claimant?

- [58] Mr. Williams testified under cross-examination that he could not recall if there was a female member of the team that arrested the Claimant.
- [59] However, in the question and answer, it was put to the Claimant that Inspector Lawes (the questioner) and a female officer accosted the Claimant. Though the question asked spoke of the 14th August 2013, I find that it must have been an error. I say this because this specific date was never put to the Claimant in cross-examination as a date on which he was confronted by the police at Red Stripe.
- [60] The Claimant himself only mentions being confronted by the police on Monday the 19th August 2013. So in my view, the reference to the 14th August 2013 in the Q&A was an error and the date should have been the 19th August 2013.

- [61] The Q&A document does not at all mention Mr. Williams as being part of the arresting team.
- [62] Counsel for the 3rd Defendant submitted that Mr. Williams was the arresting officer and points to exhibit 2(vi), specifically the Cell Diary entry, as proof. But with respect, this is not so. All this evidence shows is that Mr. Williams was part of a team of officers that **escorted** (my emphasis) the Claimant to the lock up. It does not confirm that Mr. Williams had participated in the arrest of the Claimant.
- [63] The credibility of the witness in this regard is further undermined by his own statement that he gave on August 22, 2013. In that statement, he said that at about 12:10 pm on that same day [August 22, 2013] Inspector Carey Lawes pointed out a man to him as the person against whom the compliant was made by Red Stripe. He went further to say that he went to the accused and introduced himself to him (among other things). There would have been no reason for Inspector Lawes to point out the Claimant to him nor for him to introduce himself to the Claimant if he had been the arresting officer.
- [64] In my view, Mr. Williams was not speaking the truth when he said he was part of the team of officers that arrested the Claimant on the 19th August 2013.

What Material was Before Mr. Williams to Inform his Decision to Charge the Claimant?

- [65] I find that it was only the statement of Ms. Wood that was before Mr. Williams at the time of his decision to charge the Claimant. It is my finding that none of the other statements were existent and therefore available for Mr. Williams as part of his consideration at the time of his laying the charge.
- [66] Mr. Williams clearly admits and acknowledges this but tries to get around this issue by claiming that he had interviewed these witnesses, saw supporting documents mentioned and referred to by those witnesses and had appreciated their anticipated evidence at the time of his charging the Claimant.

[67] These are the dates of the statements taken by Mr. Williams:

- a) Dian Dyke: 26.8.13
- b) Kerron Clarke-Barrett: 29.8.13
- c) Paul Rajab: 30.8.13
- d) Nicole McFarquhor: 23.7.14
- e) Kamesha Allen-Andrew: 22.9.15
- f) Danny Facey: 30.8.13
- g) Donovan Bunting: 30.8.13
- h) Venessa Melissia Scott: 24.9.13.

[68] In his own statement dated August 22, 2013, Mr. Williams stated that he was at work at the Fraud Squad on the 22nd August 2013 when Inspector Carey Lawes gave him certain instructions along with a file containing certain documents which he listed. He said he read the file and **immediately commenced investigation** (emphasis mine) into allegations of Simple Larceny etc.

[69] Mr. Equiano confronted the witness about this discrepancy and the witness said the statement is written this way because that was just how police statements are written. I rejected that explanation as being unlikely and unbelievable. I fail to believe that a trained, intelligent, police officer, who was investigating a complex fraud case, could write in a statement, a statement in which he averred that he was speaking the truth, that he immediately **commenced** investigation on the 22nd August 2013 in circumstances where he claims he had been the investigating officer from well before this.

[70] I say all of this to say that Mr. Williams had not been the investigating officer before this date and, without better and more particular evidence of his other involvement, had therefore no reason to have met and interviewed any other witness. In fact, in his own statement dated the 22nd August 2013, he never once mentioned doing anything in relation to the case other than conducting the Q&A and then charging the Claimant.

[71] There is no evidence from Mr. Williams as to the circumstances under which he came to take Ms. Woods' statement. The evidence, which I accept, points to the true investigating officer likely being either Det/Cpl Gray or Inspector Lawes. It is my finding that Mr. Williams only took over the investigation of the case on the 22nd August 2013 when he was so instructed by Inspector Lawes. In those circumstances, a reason for him taking Ms. Woods' statement would have been appropriate.

[72] Indeed, had Mr. Williams been the investigating officer before this date, it is more likely that he would have already had all of the 16 documents that were presented to him by Inspector Lawes. The impression one gets from reading this statement, which was accepted as being what was written by Mr. Williams, is that he was at work between 8:00 am and 5:00 pm on August 22, 2013; he was given the documents and formally assigned the file by Inspector Lawes at some point between those hours; between 1:15 and 2:30 pm, the Q&A was done during which it was Inspector Lawes who asked all the questions; Mr. Williams then charged the Claimant for the offences on the 22nd August 2013 at some point after the Q&A was concluded.

Did Mr. Williams have sufficient material before him and sufficient time to form an honest belief in the guilt of the accused on the balance of probabilities to charge him on the 22nd August 2013?

[73] I do not find that there is sufficient evidence that Mr. Williams had sufficient time to properly peruse the documents, investigate the case and so come to an honest belief founded upon reasonable grounds that the Claimant was probably guilty of the offences for which he charged him.

[74] Nor am I satisfied, on the evidence presented, that he had sufficient material before him to have reasonable grounds to inform this honest belief.

[75] The core difficulty with the statement of Ms. Woods, the pivotal statement, is that, as pointed out by the Claimant in his submissions, 5 of the bags listed on the

Lodgments Received for Sheet dated August 5 were accounted for on the morning of the 7th August 2013. On page 10 of her statement, Ms. Wood noted that 7 bags with monies totalling \$10,396,147.00, which were on the Lodgment Received for Sheet for August 5th and 7th were missing from the Preliminary Lodgment Report and the Guardsman Customer Receipt completed by Mr. Green for the 7th August 2013.

- [76] At pages 10 and 11, she indicated that there were 2 Cash Lodgment Received for Sheets dated August 7, 2013: one was prepared for the morning shift (with 10 bags) and then there was a second Cash Lodgments Received for Sheet dated August 7, 2013 (with 12 bags). Onto the sheet with the 12 bags, were written another 14 bags, with some of the bags from the morning shift list included (about 2 from the morning shift list were excluded for some unknown reason).
- [77] Ms. Woods further indicated that this second Lodgments Received for Sheet with the 26 bags listed is the report that confirmed that the missing bags were not present in the vault when it was opened on Thursday morning.
- [78] But on a Cash Lodgments Received for sheet dated August 8, 2013, the same missing bags were listed on this sheet. This sheet, according to Ms. Wood, was for the morning shift on August 8, 2013. This would suggest that the missing bags would then have been accounted for on this sheet on the morning of the 8th August 2013.
- [79] During his evidence, the Court asked to see this 8th August 2013 sheet. A frantic search ensued by counsel for the 3rd Defendant as well as the witness himself from amongst the exhibits.
- [80] There was eventually found, among the exhibits, yet another Lodgments Received for Sheet purportedly dated the 8th August 2013 (undated and unsigned at the bottom) which had only 7 bags on them. None of these were the missing bags and they bore no resemblance to the sheet discussed by Ms. Wood in her statement.

The presence of this sheet and the absence of the sheet from that described in Ms. Woods' statement has yet to be satisfactorily explained.

- [81] Mr. Williams tried to explain, during re-examination, that he had made a mistake in the recording of Ms. Woods' statement. But I reject that explanation as being highly unlikely. There was no further statement collected from Ms. Woods during the prosecution of the matter at the Corporate Area Criminal Court to even attempt to clear up this discrepancy. Had he really done a careful reading of the file (as he said he did in his witness statement dated the 22nd August 2013), the discrepancy would have become obvious to him and corrective measures taken.
- [82] As it stood at the time of his charging the Claimant, there was at least a statement that the stolen bags were accounted for on the morning of the 8th August 2013 and Mr. Green was not at work on that date. Ms. Woods herself only became aware of the issue about a week after when she returned to work. This means, in my view, that all Mr. Williams had to go on was that there was some evidence that the bags were missing sometime after the 8th August 2013. At the very worst, there was some doubt surrounding the bags.
- [83] It is also the evidence that nothing incriminating was ever found at Mr. Green's home. The officer did not check with any financial institution at which Mr. Green held any bank accounts or other type of financial account or instrument. Not even the credit union at which the Claimant was held were checks made.
- [84] I find that there was, at the very least, an unresolved discrepancy concerning the missing bags on the morning of the 8th August 2013 according to the statement of Ms. Woods. I find that this discrepancy was not realised by Mr. Williams until he was giving his evidence during this trial.
- [85] I find that Mr. Williams did not sufficiently appreciate the material before him because he simply did not have the time to digest the volume of material, appreciate the connections in such a complex fraud case and then come to an

honest belief in the Claimant's guilt on reasonable grounds. The grounds to come to that belief did not exist, in my view, at the time the charge was laid.

[86] I find that Mr. Williams had needed much more material from far more witnesses than he had and he did not pursue these witnesses until after the charge was laid. It would not be the first time that a Jamaican police officer has done such a thing. It can even be considered fairly typical.

[87] In conclusion, I am satisfied that the Claimant has successfully made out their case for Malicious Prosecution against the 3rd Defendant.

DAMAGES

Special Damages

[88] There is no evidence to support an award for any special damages. Therefore, no award will be made for the sums pleaded.

General Damages

False Imprisonment

[89] In arriving at a figure for False Imprisonment where the tort involved multiple days, I will not adopt the reducing scale approach for this case as the period of 5 days of false imprisonment, which I have found the period to have been, is too short to warrant its use.

[90] Counsel for the Claimant submitted several cases for the Court's consideration, but I found the authority of ***John Crosfield v AG of Jamaica et al***⁷ to be most useful as a comparator. A security guard was charged for breaking into a warehouse he was assigned to protect. He was detained for four days before being

⁷ (Unreported) Supreme Court of Jamaica, CL E219/2001, September 10, 2009.

taken to court. He was awarded the sum of \$600,000.00 for False Imprisonment. That sum amounts to \$150,000.00 per day. It updates to \$1,519,285.71 (\$379,821.42 per day) after indexation.

- [91] Counsel for the 3rd Defendant submitted the authorities of ***Delroy Thompson v AG of Jamaica et al***⁸ and ***Dodd v AG et al***⁹. In those cases, the Claimants were detained for 6 and 7 days respectively. In *Thompson*, the Claimant was awarded the sum of \$650,000.00 which updates to \$997,510.82 after indexation (\$166,251.80/day). In *Dodd*, the Claimant was awarded the sum of \$525,000.00 which updates to \$847,892.94 after indexation (\$121,127.56/day).
- [92] In my view, the *Crosfield* decision seems to be an outlier. Three Hundred and Eighty-Thousand Dollars per day without aggravating features, is quite high. I am more persuaded by the authorities submitted by the 3rd Defendant and lean more in favour of an award in the range of *Thompson*.
- [93] The Claimant in this case was arrested in a very public and dramatic manner at his former place of employment; he was taken to his home where he said a crowd had gathered, which I accept, and the search performed; he also described the ordeal of his discomfort whilst in custody immediately after his arrest. In my view this is a bit worse than in *Thompson* because this Claimant was taken to his home under police escort and the public saw him. I do not accept his evidence about

⁸ [2016] JMSC Civ 78

⁹ [2017] JMSC Civ 91

being made to stand in the rain. I am of the view that that as an exaggeration. In the circumstances I believe an award of \$900,000.00 is more than reasonable.

Malicious Prosecution

[94] Counsel for the 3rd Defendant submitted the authority of *Roderick Cunningham v The AG*¹⁰ as authority for the factors a Court considers in awarding Damages for Malicious Prosecution.

[95] These factors are:

- a) The seriousness of the offence(s) charged;
- b) The length of the prosecution period;
- c) The number of court attendances for the Claimant;
- d) Any damage to the Claimant's reputation or credit.
- e) The mental distress or anxiety suffered by the Claimant as a consequence of the prosecutorial process.
- f) The humiliation and/or disgrace caused by the charge(s); and
- g) Any indignity or discomfort caused from the fact of the charge against him.

[96] In this case, the Claimant was charged with two very serious offences – larceny; and falsification of accounts. Both of those offences attract prison terms on conviction before a Parish Court.

[97] The amount of money involved, by itself, makes the allegations very very serious. The manner in which it was alleged to have been stolen was also quite damning as it showed the Claimant as a scheming and deliberate planner.

[98] The Claimant attended court on a fair number of occasions.

¹⁰ [2014] JMSC Civ 30

[99] I accepted his evidence that he had a terrible ordeal during the prosecution of the case. I accepted he attended to report to the police on at least 100 occasions; I accepted his evidence that the effect of the charges against him was that it reduced his ability to get any new employment; I accept his evidence that the matter was publicised in a newspaper that was widely circulated in Jamaica. However, there is no evidence from anyone as to the “shunning” of the Claimant. I do not have any evidence from his wife as to why she left him as he says she did. Nor do I have any evidence from any family member or friend that says they viewed him in any lesser light.

[100] I did not see anything in his evidence to suggest that he suffered any tremendous psychiatric injury. But I do accept that it was most likely that he suffered some form of distress and anxiety as a result of the charges themselves and the upheaval that placed on his life. Indeed, he was in custody for approximately one month before being offered bail. The deprivation of one’s liberty for a month is, in and of itself, traumatic. Let alone in a police lock-up facing two very serious charges. I also accepted that he suffered humiliation during the process.

[101] I found the authority of ***Alton Wedderburn v AG of Jamaica***¹¹ submitted by the 3rd Defendant very helpful. The Claimant in that case was a computer technician and Distribution Centre Manager employed to Red Stripe. He was arrested and charged with 41 counts of obtaining money by false pretences. He was tried and convicted, but his conviction was overturned on appeal. He was awarded the sum of \$1,450,000.00 for malicious prosecution. That sum amounts to \$1,945,222.33 today.

[102] In my view, this case has to be discounted. Wedderburn had far more charges, was in a more senior position to that of the Claimant and therefore more exposed to ridicule and public odium as he was in a position of trust and authority as a

¹¹ [2020] JMSC Civ 166

manager, his ordeal lasted for much longer due to the appellate process and his reputation loss would have been greater as he was also convicted of the offence.

[103] The Claimant here was not in as lofty a position as Wedderburn. He was a settlement officer, whereas Wedderburn was a manager. Wedderburn was convicted and therefore, there would be the additional odium that went with a conviction (a trial, witnesses testifying etc.). In this case, the Claimant did not have to go through the indignity of a trial and the rehashing of potentially embarrassing testimony in public. But, I do recognise that the lack of witnesses for the Crown does paint a rather dim picture of the prosecution's case to begin with. Finally, the number of charges against Wedderburn far outstrips those of the Claimant.

[104] In all the circumstances, therefore, I found that *Wedderburn* could be discounted by \$300,000.00 and we arrive at a figure of \$1,700,000.00 for the Claimant.

DISPOSITION

- 1 Judgment for the Claimant against the 3rd Defendant for False Imprisonment and Malicious Prosecution.
- 2 Judgment for the 1st Defendant against the Claimant on both claims.
- 3 Damages to the Claimant against the 3rd Defendant assessed as follows:
 - a. False Imprisonment: Nine Hundred Thousand Dollars (\$900,000.00) with interest thereon at 3% from the 17th November 2017 to the 9th May 2025;
 - b. Malicious Prosecution: One Million, Seven Hundred Thousand Dollars (\$1,700,000.00) with interest thereon at 3% from the 17th November 2017 to the 9th May 2025.
- 4 Costs to the 1st Defendant against the Claimant to be taxed if not agreed.
- 5 Costs to the Claimant against the 3rd Defendant to be taxed if not agreed.

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Dale Staple
Puisne Judge