



[2025] JMSC Civ 18

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION**

CLAIM NO. 2016HCV04776

BETWEEN	RENOIR REYNOLDS-HOSANG	CLAIMANT
AND	SPECIAL CONS. COLLINGTON MONTAGUE	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

IN OPEN COURT

Mr. Sean Kinghorn instructed by Messrs. Kinghorn and Kinghorn Attorneys-at-law for the claimant.

Mrs. T. Rowe-Coke instructed by the Director of State Proceedings for the defendants.

HEARD: November 6, 2024 and February 14, 2025

Damages - False Imprisonment – Malicious prosecution and assault.

CORAM: J.PUSEY, J

Oral Judgment

The Claimants Case

- [1]** On October 6, 2012, the claimant was standing in the Mandeville Market place in the parish of Manchester with his friend, when the 1st Defendant accosted him and demanded a search of his person and a knapsack he was carrying.
- [2]** The claimant threw the bag to the ground and said “feel free to search it” because of the manner in which the constable approached him.

- [3] The officer searched the bag and said to the claimant, “now me tink ‘bout it, me nuh like the way yuh disrespect mi’ and used his hand to hit the claimant on the right side of his face and neck. The claimant positioned himself as if to hit the 1st defendant and the other police officers came and held on to him.
- [4] The 1st defendant placed a handcuff on the claimant which caused soft tissue injury to his wrist and took him to the Mandeville Police Station. He was taken to the Mandeville Hospital by the 1st Defendant who observed an injury to his wrist, where he was treated.
- [5] He was kept in police custody for approximately six (6) hours and released on bail.
- [6] He was charged with Disorderly Conduct, Resisting Arrest and Using Indecent Language.
- [7] He attended the Mandeville Parish Court on several occasions and the offences for which he was charged were eventually dismissed for want of prosecution as the 1st Defendant never attended court.
- [8] He denied using indecent language to the Constable or that he was not calm but agreed he was aggrieved by the manner in which the Constable approached him initially saying:
- “come yah bwoy, weh you have pan yuh?”
- [9] On November 14, 2016 he filed this claim seeking general damages, special damages as well as aggravated, exemplary and vindictory damages and interest for assault and battery, false imprisonment and malicious prosecution.

The Defendant Case

- [10] The 1st defendant was on Special Patrol Duties in the town of Mandeville in the parish of Manchester about 2:50 pm on October 6, 2012, driving a marked police vehicle with three (3) colleagues all in uniform, when he saw the claimant standing in the market with a knapsack on his back.

[11] The claimant looked in his direction and then turned around quickly. Based on his experience of accosting persons in the market with offensive weapons and ganja, this action aroused his suspicions, and he stopped the vehicle and accosted the claimant.

[12] He identified himself to the claimant and asked to search his person and knapsack. He said the claimant suddenly became boisterous, threw the knapsack to the ground and said:

“every wehunuh police see man unuh just a take set pon me so.”

[13] The 1st defendant told him to calm down and proceeded to approach him to search him when he said,

“move you bomboclaat from yah so.”

[14] The constable pointed out the offences for which he was charged and lay hold of the claimant who started pulling away from his grip and from the handcuff. He was subdued with the help of the other officers present, cuffed and cautioned but made no comment. He kept moving and the 1st defendant told him that if he moved the cuff would become tighter.

[15] He was taken to the Mandeville Police Station where he and the knapsack were searched. While removing the cuffs the Constable noticed an injury to the claimant’s hand and took him to the Mandeville Hospital where he was treated.

[16] The Constable said he was trained how to interact with the public and the Human Rights and Use of Force Policies of the Jamaica Constabulary Force and had no reason to disrespect the citizen or assault him. He approached the claimant because his sudden movement caused him to believe that he had something unlawful hidden in his bag.

The Law

[17] The law concerning assault and battery, (assault and battery has now become almost synonymous), false imprisonment and malicious prosecution is well settled in our jurisdiction.

Malicious Prosecution

[18] In **Keith Nelson v Sergeant Gayle and the Attorney General of Jamaica** Claim No. 1998/N 120Brooks JA (as he then was) succinctly outlined what a claimant is required to do in a case of Malicious Prosecution in these terms:

In an action for malicious prosecution, in order to succeed the claimant must prove on a balance of probabilities the following;

- (i) That the law was set in motion against him on a charge for a criminal offence;*
- (ii) That he was acquitted of the charge or that otherwise it was determined in his favour;*
- (iii) That when the prosecutor... set the law in motion he was actuated by malice or acted without reasonable or probable cause;*
- (iv) That he suffered damage as a result.*

False Imprisonment

[19] The Osborn's Concise Law Dictionary 7th Edit. By Roger Bird defines false imprisonment as;

“The confinement of a person without just cause or excuse. There must be a total restraint of the person; and the onus of proving reasonable cause is on the defendant.”

Assault and battery

[20] Battery is the intentional and direct application of force to another person; while assault is an act of the defendant which causes the claimant to have reasonable apprehension of the infliction of a battery on him by the defendant or actual battery.

Application

[21] There are two divergent accounts of what transpired on October 6, 2012 in the Mandeville market between the claimant and the defendant. What is beyond dispute is that they were both present, the claimant sustained injuries and had to get medical attention and was arrested and charged with three offences which were dismissed in his favour. The outcome will be determined by the credibility of these witnesses as to fact.

[22] It is the claimant who avers and who is required to prove his claim on a balance of probabilities. He says he noticed the officer looking at him and says he was approached aggressively by the officer and reacted to the aggression by throwing the bag to the ground. The defendant, who is trained in public interaction and police use of force policies, says he went up to the claimant and identified himself and asked for a search.

[23] The cross-examination of the claimant focused on whether he was angry and discourteous when he was approached by the defendant and threw the bag on the ground. Implicit in that is the notion that what transpired emanated from the claimant's action. The claimant maintained that he was calm but reacted to the 'negative approach' of the officer. The claimant was consistent throughout his evidence and unruffled by the cross examination.

[24] Throughout the evidence of the defendant, he sought to blame the negative aspects of the encounter on the claimant's conduct. He claims he respectfully and in conformity with his training approached the claimant who became angry,

cursed expletives, threw his bag to the ground and spoke on the top of his voice causing a crowd to converge. However, the officer did not ascertain the name of the claimant, was unable to recall the details of the handcuffing and is oblivious to the concept of reasonable cause in activating a constable to approach a citizen.

[25] I accept the evidence of the claimant that:

- He was approached negatively by the constable
- He threw the bag to the ground in response to how he was approached
- He never used any expletive but spoke loudly
- That the officer hit him in the face and neck as he felt disrespected
- He was not told he was being arrested and for what offences.

[26] I find that the officer profiled the claimant and based on his assumptions, aggressively approached the claimant. The constable admits that he is not conversant with the concept of 'reasonable cause' and simply acted on experience. It is the reaction of the claimant, I find, in throwing the bag to the ground that is at the heart of the activities that day and I do not accept that moving suddenly is sufficient basis for a constable to believe that a citizen has contraband in his possession. There must be something more than a 'whim' held by the constable. The constable never searched the bag or the person of the accused, which was the reason he approached him, but hit and arrested him in an assertion of power.

[27] This aggression attracted the attention of people in the marketplace and caused the crowd to converge.

[28] The claimant did not quietly succumb to being cuffed and four officers converged on him and cuffed him in such a manner that it injured his hand. This is in circumstances where he was not told that he was being arrested and for what

offences. The claimant said he had no time to react because the constable just began to act against him. I find it telling that the defendant in cross-examination said he was 'unsure about the whole aspect' of the cuffing, the major activity in the interaction.

[29] I therefore reject the constable's assertion that he, in, accordance with public interaction and use of force policies, approached the claimant who became boisterous to the extent that he breached the Town and Community Act by breaching the peace and behaving disorderly.

[30] It follows therefore that the court is satisfied that the constable set in motion a criminal charge against the claimant because he felt disrespected, which, according to the Certificate from the Parish Court, was determined in the claimant's favour and that the officer acted without reasonable and probable cause when he charged the claimant for disorderly conduct, using indecent language and resisting arrest.

[31] The court accepts the claimant's evidence that he did not use any indecent language to the officer but threw the bag to the ground, earning the ire of the constable. The defendants are therefore liable in damages to the claimant.

Damages

[32] In this matter there are claims for aggravated, exemplary and vindictory damages. These heads of damages are to be specifically pleaded with the facts giving rise to them specified. They are reserved for cases of arbitrary, oppressive, degrading, unconstitutional and egregious behaviour on the part of the defendant. See **Sharon Greenwood-Henry v The Attorney General of Jamaica** Claim No CL G 116 of 1999 delivered on the 26th October, 2005. The evidence in this case does not support any claim for aggravate, exemplary, or vindictory damages.

General Damages Assault

[33] Based on the medical evidence there was injury to the right medial wrist with abrasions and soft tissue injury requiring daily physiotherapy for one month to regain full function. In addition, the court has accepted that the claimant was hit in the face and neck.

[34] The defendant relying on **Barrington Graham v AG et al** [2020] JMSC Civ 144 where the injuries were similar but more serious suggested an award of \$1,196,310.00 reduced by 75% to \$300,000.00; while the claimant relied on **Leeman Anderson v AG et al** Claim No. CL 2002 A 017 found in Volume 6 of Khan's Personal Injuries where a similar injury required plaster of Paris and suggest an award of \$1,892,255.89.

[35] The injuries in this case were not as serious as the **Leeman Anderson** case and more serious than in the **Barrington Graham** case. An award of \$1,700,000.00 is made.

Malicious Prosecution

[36] The prosecution of this matter encompassed the period October 6, 2012 to its dismissal on September 9, 2013. This award compensates for the impact on the reputation of the claimant.

[37] The defendant relies on **Maxwell Russell v The Attorney General** Claim No. 2006 HCV 4024 where a prosecution lasting 10 months, earned an award which updates to \$768,600.00 and suggest that as this is a Petty Sessions matter for minor offences the award should be reduced to \$600,000.00.

[38] The claimant relied on **Greg Martin v AG et al** Claim No. 2007 HCV 01096 where an award of \$1,500,000.00 for a university graduate charged without reason for drug offenses and prosecuted for 19 months was made.

[39] In the circumstances of this claim where the claimant suffered embarrassment for 10 months an award of \$900,000.00 is sufficient.

False Imprisonment

[40] The claimant submitted that the sum of \$1,600,000.00 is reasonable in reliance on the **Maxwell Russell v AG** matter. The defendant relied on the **Barrington Graham** matter where an award which updates to \$664,617.00 for 5 hours of incarceration was made.

[41] In the instant case, where the claimant was taken into custody violently in the public market place and taken to hospital in custody with the attendant embarrassment an award of \$1,000,000.00 is in order.

ORDER

1. Judgment for the claimant.

2. General Damages

- Assault	\$1,700,000.00	
- Malicious Prosecution	\$900,000.00	
- False imprisonment	<u>\$1,000,000.00</u>	- Total
	\$3,600,000.00	

With interest of 3% from November 14, 2016, to the date of judgment.

Special Damages

- Legal Fees	\$150,000.00	
- Medical expenses	<u>\$1,000.00</u>	
- Total	\$151,000.00	

With interest of 3% from October 6, 2012, to the date of judgment.

3. Cost to the claimant to be agreed or taxed.

Judith Pusey
Puisne Judge