



[2025] JMSC Civ.36

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018 HCV 00944

BETWEEN	LAWRENCE ROWE	CLAIMANT
A N D	THE ATTORNEY GENERAL OF JAMAICA	1 ST DEFENDANT
A N D	CONSTABLE CLAYTON BROMFIELD	2 ND DEFENDANT

Mr. John Clarke, Attorney-at-Law for the Claimant

Mr. Romario Miller and Ms. Rykel Chong instructed by the Director of State Proceedings for the Defendants

HEARD: March 17, 2025 and March 24, 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 Defendant for the offences under the Town and Communities Act and the other offences – Whether the Claimant was entitled to resist an unlawful arrest.

Tort – Assault – Whether the 2nd Defendant Assaulted the Claimant.

Statute – Town & Communities Act – Sections 11 and 23

Statute – Constabulary Force Act – Sections 15, 30 and 33

DALE STAPLE J

BACKGROUND

- [1]** It was the evening of the 27th March 2014 in Allman Town in the parish of St. Andrew. The Claimant claims he was walking along Stephen Street in the community in the vicinity of the police station when he came across a friend.
- [2]** Something happened and then, subsequent to this, the 2nd Defendant accosted him, the Claimant. He said the 2nd Defendant ordered him to go into his yard using foul language (which need not be repeated here). The Claimant said he retorted to the officer who allegedly raised his baton to strike him, but the Claimant threatened to report the matter.
- [3]** The 2nd Defendant then grabbed him in his waistband, almost touching his crotch, and took him to the Allman Town Police Station whereat he was eventually arrested and charged for Disobeying the police command, indecent language and Resisting Arrest.
- [4]** The Claimant was given station bail in his own surety and was given a date to attend the Half-Way-Tree Criminal Court for the 10th April 2014. He went before the then Petty Sessions Court (now the Lay Magistrate's Court) before the Justices and on the 9th September 2014, he was freed of all charges.
- [5]** He has now brought this claim against the Crown and their servant, the 2nd Defendant, for the torts of Malicious Prosecution, Assault and False Imprisonment. He has also claimed for breach of his Constitutional rights to a fair hearing.
- [6]** It is important to note that the Defendants have no evidence before the Court. The reason for this is that the 2nd Defendant, the only witness of fact upon which the Defendants sought to rely, had not presented himself before the Court to give evidence despite requests from the Crown's Attorneys-at-Law so to do.

[7] The Defendants applied, very late in the day, for permission for the 2nd Defendant's written statement that he produced for the criminal proceedings to go into evidence pursuant to s. 31E of the **Evidence Act**. I refused to allow this go to in to evidence as, based on the evidence produced, the 2nd Defendant was being uncooperative with the Crown in making himself available to give the evidence despite efforts being made to accommodate him, even via remote testimony. In those circumstances I was not satisfied that the requirements under s. 31E had been met by the Defendants in that the 2nd Defendant, as a named Defendant, could not seek to create barriers to himself coming to Court to testify and use that as a basis to say that he is out of the jurisdiction and it is not reasonably practicable to secure his attendance.

THE LAW

Malicious Prosecution

[8] 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.

[9] 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:

- 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;

¹ [2023] JMSC Civ 83

- 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.

False Imprisonment

[10] In the celebrated case of ***Peter Flemming v Detective Corporal Myers et al***² 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.

[11] 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 maliciously³.

Assault & Battery

[12] The tort of Assault is committed where a person unlawfully puts another person in fear of an imminent battery. Battery is committed where a person unlawfully and intentionally touches another. This touching need not be anything serious or severe and it is well known that the least touching of another person in anger⁴ (I would add unlawfully) is sufficient to establish battery.

[13] Pursuant to s. 15 of the **Constabulary Force Act**, a police officer has the power to arrest a person without a warrant where they are found committing (inter alia) a summary offence.

² (1989) 26 JLR 525

³ See s. 33 of the Constabulary Force Act.

⁴ *Cole v Turner* [1704] 6 Mod Rep 149

[14] It is also true that a police officer may use reasonable force in circumstances where the individual is resisting a **lawful arrest** (emphasis mine). In the case of *Finn v AG of Jamaica*⁵, cited by the Defendants, Wolfe J (as he then was) stated,

“It is settled law that an officer may repel force by force where his authority to arrest or imprison is resisted and will be justified in doing so even if death should be the consequences, yet he ought not to proceed to extremities upon every slight interruption nor without reasonable necessity.”

[15] In the case of *Finn Wolfe* J found that the Plaintiff was one of two men that had participated in the robbery of a young woman and had attempted to flee on a motorcycle when they were chased by the police. The police alleged that during the chase, the pillion rider pulled a firearm and shot at the police. The police returned fire killing the pillion and the Plaintiff escaped, but he was also shot and injured seriously in the process. The Plaintiff was eventually apprehended at the University Hospital of the West Indies.

[16] Wolfe J (as he then was) had to grapple with the question as to whether or not the police had used reasonable force to apprehend the Plaintiff. Wolfe J rejected the Defendant’s case that they were fired upon by the Plaintiff and the pillion. He accepted the Plaintiff’s evidence that he had fallen from the motorcycle on the sidewalk. In those circumstances Wolfe J found that the officers could have utilised significantly less force in the apprehension of the unarmed plaintiff with the result that they had committed battery.

A Brief Note on Resisting Arrest

[17] It is also important to note that the officer must be carrying out a **lawful** arrest. The decision in *Brazil v Chief Constable of Surrey*⁶ is instructive.

⁵ (1981) 18 JLR 120

⁶ [1983] 3 All ER 537

[18] The appellant, a female, was arrested for acting in a manner likely to cause a breach of the peace and was taken to a police station, where she was told by a policewoman that everyone brought into the station had to be searched for their own safety. Before any attempt had been made to search her, she struck the policewoman (the first assault) and had to be restrained. As she still refused to cooperate with the search, she was seen by the officer in charge of the police station, who suspected that she was in possession of prohibited drugs and ordered her to be searched by another policewoman.

[19] The appellant was not informed of the officer's suspicions or the new reason why she was to be searched. While the search was being forcibly carried out, the appellant struck the second policewoman (the second assault).

[20] She was convicted by magistrates on separate charges of assaulting both policewomen in the execution of their duty, contrary to s 51(1) of the Police Act 1964. She appealed against both convictions, contending that in neither case could she be guilty of an offence under s 51(1), because (i) at the time of the first assault the policewoman was acting outside the scope of her duty because she had no right to require the appellant to be searched simply on the basis of a general rule that everyone brought into the police station had to be searched, and (ii) at the time of the second assault the second policewoman was acting outside the scope of her duty because she had no right to search the appellant without first informing her of the reason for the search, namely that she was suspected of being in possession of prohibited drugs.

[21] The Court of Appeal ruled as follows:

(1) A police constable could not justify a search simply on the basis of a general rule; instead, the constable had to consider in each case whether in the particular circumstances a search was necessary. Since there was no evidence in respect of the first assault that the policewoman had considered whether a search was necessary she could not be said to have been acting in the execution of her duty when she was assaulted (see p 540 j, p 541 b and p 543 e to j, post); Lindley v Rutter [1981] QB 128 followed.

(2) Because a search involved an affront to the dignity of a person a police constable was not normally entitled to carry out a search without first telling the victim of the search why it was necessary in the particular case (Emphasis mine). The magistrates not having made any finding that there had been special grounds for exempting the second policewoman from the need to tell the appellant why the officer in charge had ordered her to search the appellant, it followed that she also could not be said to have been acting in the execution of her duty when she was assaulted while searching the appellant without first telling her of the reason for the search.

- [22] A person who is being unlawfully arrested, has the right to resist the unlawful arrest. **The case of *R v Solomon Henry***⁷ is authority for this principle. In that case, the Appellant was approached by G, a Constable in plain clothes. According to G, he knew the Appellant and that the Appellant was wanted by the police. The Appellant saw G approaching and ran with G in pursuit. Cornered, the Appellant took a knife from his pocket and stabbed at G. There was no evidence that the Appellant knew that G was a constable or that the Appellant had been committing an offence when G gave pursuit.
- [23] The Court of Appeal held that G had no authority to arrest the Appellant and that the Appellant therefore was entitled to defend himself against G's attack.
- [24] Another interesting case is that of ***R v Sylvia Reid***⁸. In that case the Appellant was convicted for assaulting a police constable who was trying to arrest her child when she attempted to hit the constable with a stone. The learned Magistrate in his findings of fact for conviction stated that the Appellant had used unnecessary violence. The Court of Appeal stated that the Magistrate must have found that the Police Officer was acting illegally and that the Appellant was justified to some extent in preventing him from so doing, but that she used unnecessary violence.

⁷ (1967) 10 JLR 237

⁸ (1969) 11 JLR 284

The Court of Appeal held that the attempt to hit the constable with the stone could not amount to use of unnecessary violence and quashed the conviction.

[25] Finally, the authority of *Collins v Wilcock*⁹ makes the simple point that except when lawfully exercising his power of arrest or some other statutory power, a police officer had no greater rights than an ordinary citizen to restrain another.

[26] So an officer cannot arrest someone for resisting arrest, where they are resisting an unlawful arrest. In that case, the citizen is entitled to resist. But in this modern dispensation, the citizen does so at their own risk.

SUBMISSIONS & ANALYSIS

[27] Both parties made written submissions. However, the fact of the matter is that the Crown has no evidence to support their submissions regarding the facts of the case. In other words, without any evidence from the police officer who carried out the arrest, the Court has no evidence as to the justification(s) for his actions.

[28] The Court is therefore left with only the evidence of the Claimant. Having observed the Claimant giving his evidence, I was satisfied that he was a credible witness who was not at all shaken in cross examination.

[29] He gave his evidence calmly, in a forthright manner. He answered all questions put to him in a reasonable way and I found him to be credible and reliable.

Did the Officer Act Lawfully In Arresting and Detaining the Claimant?

[30] The Crown sought to say that the 2nd Defendant was justified in his action of arresting and detaining the Claimant for the offences.

[31] However, I reject this contention.

⁹ [1984] 3 All ER 374

- [32] I did not find that the Claimant was acting in a disorderly manner at the time he was accosted by the 2nd Defendant. I accept his evidence that he was simply along the roadway when he was accosted by the police officer.
- [33] There is no evidence that the officer had a lawful basis for telling the Claimant to go into his yard. As such, the Claimant had a right to assert his right to freedom of movement. Significantly there is no evidence of the manner of the conduct of the Claimant which one could objectively say was “disorderly and disturbing the peace”.
- [34] Section 11 of the **Town & Communities Act** makes it an offence for a person to conduct himself in a noisy and disorderly manner to the disturbance of peace and good order or to the annoyance, discomfort or obstruction of members of the public.
- [35] In the absence of any evidence from the officer of what, in his view, was noisy or disorderly or caused annoyance, discomfort or obstruction to members of the public, I am constrained to find that there is no evidence that the Claimant was acting in a disorderly manner.
- [36] But, even if there was evidence of this disorderly behaviour on the part of the Claimant, the officer cannot just arrest the Claimant. Counsel Mr. Clarke relied on the decision of ***Shaquille Ashley v R***¹⁰ for the proposition that unless the officer has requested and has not been given the name and address of an offender for an offence under the **Town & Communities Act**, the officer cannot arrest the Defendant. This is based on s. 23 of the said Act.
- [37] Section 23 of the TCA says that it is lawful for a constable...to take into custody without a warrant any person who, within view of any such constable, shall offend in any manner against the Act and whose name and residence shall be unknown

¹⁰ [2022] JMCA Crim 46

to such constable and cannot by enquiry be ascertained by such constable, but not otherwise...

[38] In **Ashley** the Appellant was a member of a group of men walking along a road in Portmore, St. Catherine. Two officers approached them and proceeded to search them. The appellant was searched and a ratchet knife found on him. One of the officers arrested him for being in possession of an offensive weapon. An altercation then ensued which escalated to a vigorous struggle following which the Appellant was restrained with cuffs. He was charged with, among other things, disorderly conduct.

[39] He was convicted of all offences. Concerning the offence of resisting arrest, the Court of Appeal found¹¹ that a person has an unqualified right at common law to resist an unlawful arrest. They found that under the Offensive Weapons Act that an arrest may be made if the person being found with the offensive weapon, fails to give his name and address to the officer.

[40] At paragraph 19 of the judgment, the Court of Appeal pointed out that the same consideration would apply to s. 23 of the **TCA**. Since there was no evidence that the officer sought to ascertain the name of the Appellant at the time of arresting him for disorderly conduct, the arrest would not be lawful and the officer would not be in the lawful execution of his duty. Therefore, the Appellant would be in his right to resist this unlawful arrest.

[41] In this case, there is also no evidence that the 2nd Defendant, at the time of making the arrest, tried to ascertain the name of the Claimant. The evidence, which I accept, is that the Claimant did not know the 2nd Defendant from before and this was the first he was seeing him. As such, the 2nd Defendant could not arrest and detain him without showing either that he knew him from before or that he tried to

¹¹ See paragraph 23

ascertain his name and address, but the Claimant did not provide the information or the 2nd Defendant could not get this information.

[42] Nor do I find that the Claimant did in fact resist the attempt to arrest him. But even if he did, he would have been entitled to resist the arrest as the arrest was unlawful.

Malicious Prosecution

[43] There is no dispute that the cases against the Claimant in the criminal court were terminated in his favour. Nor is there any dispute that the 2nd Defendant initiated the prosecution and set the law in motion against the Claimant. Indeed the 2nd Defendant was arresting officer, witness and prosecutor all in one.

[44] The only question that was raised was whether or not the 2nd Defendant acted with reasonable and probable cause and without malice.

[45] There is, again, no evidence from the 2nd Defendant as to what the Claimant did which would have warranted the 2nd Defendant having any belief, let alone an honest belief, that the Claimant was behaving in a disorderly manner contrary to s. 11 of the **TCA**.

[46] There is no evidence of disorderly conduct within the meaning of s. 11 of the **TCA** and so I find that the 2nd Defendant had no honest belief in the guilt of the Claimant. The 2nd Defendant therefore had no reasonable and/or probable cause to prosecute the Claimant for this offence.

[47] Further, he had no basis for prosecuting the Claimant for resisting arrest as his arrest of the Claimant was unlawful and the Claimant was entitled to resist the unlawful arrest.

Assault

[48] For the reasons outlined above, the raising of the baton, the grabbing of the Claimant in his waistband, the flinging of the claimant on a wall causing the bruise to the shoulder and arms and placing him in cuffs etc. would all amount to assaults.

There was no challenge to the Claimant that these things happened in cross-examination. I am satisfied that these things happened on the balance of probabilities. I repeat I find the Claimant to be credible and reliable.

[49] None of these actions were lawful. None of these actions were reasonably required for the arrest of the Claimant. Indeed, the arrest, as I have found, was unlawful, and so none of these actions were necessary. Since they were unnecessary, they were unjustified and actionable as assaults.

DAMAGES

Malicious Prosecution

[50] The Claimant was prosecuted in the Lay Magistrate's Court by three Justices of the Peace. This is a lower court with significantly less stakes and notoriety than the Parish or Supreme Courts.

[51] With all due respect to the submissions of Mr. Clarke, none of the authorities submitted by him on this aspect of the Claim were helpful. Those Claimants had been prosecuted for significantly longer periods of time and for more serious offences in higher courts that would have attracted more potential for public notoriety and embarrassment. The Claimant here was only before the Court for a mere 5 months before his case was finished.

[52] There was also no evidence of any reputational damage suffered by the Claimant as a result of him being prosecuted. He testified that in 2017, three years after the matter was finished, he received the prestigious Prime Minister's Youth Award for Excellence in Community Volunteerism. It is manifest therefore that the Claimant's reputation suffered no damage whatsoever.

[53] In those circumstances, I am not satisfied that the Claimant is entitled to any substantial award. In the case of ***Bent v AG of Jamaica***¹² the Court awarded the Plaintiff \$90,000.00 in December 2006 for general damages for malicious prosecution. The Plaintiff in that case was a man of modest reputation, but had been prosecuted for Assaulting Police, Resisting Arrest and Indecent Language. The charge of resisting arrest was dismissed, but the others were adjourned *sine die*.

[54] The Claimant here was, I accept, a prominent figure in the community. He was the Constituency Secretary to former Member of Parliament Ronald Thwaites at the time of the incident in 2014. He was also the Director of a Charity. So he was a man of reputation in the community. But there was, as I said earlier, no evidence of significant reputational odium that he would have suffered as a consequence of the prosecution. I do accept that being arrested and prosecuted in any criminal court does cause embarrassment.

[55] However, as stated above, this was a very low level court and the prosecution was not for any significant period of time. Nor were the offences such that would attract significant public odium.

[56] The sum of \$90,000.00 updates to \$333,211.49 after indexation using the current CPI for February 2025 of 141.8.

[57] In the circumstances of this case, I am satisfied that an award of \$350,000.00 is more than adequate to compensate the Claimant under this head.

False Imprisonment

[58] I am satisfied that the Claimant was falsely imprisoned for a short period of time of just about 5 hours until he received station bail in his own surety.

¹² Unreported, Supreme Court of Jamaica, 1998/B330, Brooks J, December 19, 2006.

[59] I find the case of *Attorney General of Jamaica et al v Harvey Morgan*¹³ submitted by the Claimant to be an appropriate starting point. The Claimant/Respondent was arrested and charged for several offences. He was detained for 10 hours until he was bailed. For False Imprisonment, the Court of Appeal determined that he was entitled to \$124,172.30. That now amounts to \$363,162.90. Given the shorter period of time for the false imprisonment in this case, I find that the award could be reduced.

[60] I also had regard to the case of *Delia Burke v Deputy Spt Carol McKenzie et al*¹⁴. This was a decision of McDonald-Bishop J (as she then was). The Claimant there was awarded the sum of \$200,000.00 for False Imprisonment in September of 2014. In that case, the Claimant, a female, was found to have suffered serious humiliation and embarrassment in the circumstances of her false imprisonment, albeit it was for a period of around 2.5 to 3 hours. That sum amounts to \$327,861.27 in today's money.

[61] *Delia Burke* is distinguishable as she did not suffer as much physically in the custody of the police as this Claimant did. In the case at bar, the Claimant was physically assaulted by the 2nd Defendant on the scene of the incident; he was hauled by his pants waist in a very humiliating fashion in front of an assembled crowd to the police station; he was again almost physically hit by yet another officer in another room.

[62] So clearly this was more humiliating, certainly frightening and painful than the cases above.

[63] I find therefore that an appropriate award here would be \$400,000.00 in this case.

¹³ Unreported, Court of Appeal of Jamaica, SCCA 11/2003, March 14, 2008.

¹⁴ [2014] JMSC Civ 139

Assault

[64] There is no medical evidence produced in this case to support the claim for physical assault. It does not mean, that I cannot make an award under this head.

[65] Counsel for the Claimant submitted the case of *Desmond Prescott v AG of Jamaica*¹⁵ as one of the cases under this head. In that case, Campbell J found that the Claimant was assaulted by the placing of handcuffs on his person for an inordinately long period of time. He was awarded \$250,000.00 in April 2008. That award comes to \$741,631.80 today.

[66] I think that an award of \$500,000.00 is more than reasonable in all the circumstances of the case at bar given what happened to the Claimant physically.

Special Damages

[67] I am satisfied that the Claimant did incur costs of \$10,000.00. I have no reason to disbelieve him. However, there was no reasonable explanation as to why the Claimant had to hire private transportation and not take regular public transportation. In the circumstances, I am not satisfied that he would be entitled to this sum. I would award a figure of \$5,000.00 as being more reasonable transportation expenses between Allman Town and Half-Way-Tree.

[68] I do not find any of the other heads of special damages proven. There was no evidence that he had to hire counsel at any point during the course of his arrest, charge, detention or prosecution.

VINDICATORY ETC DAMAGES

[69] I am not satisfied that vindicatory, or exemplary damages are appropriate for this case. Nor am I satisfied that damages should be awarded on the footing of aggravated damages. There is nothing extraordinary about the circumstances of

¹⁵ Unreported, Supreme Court of Jamaica, L. Campbell J, April 18, 2008.

this claim that warrants awarding vindictory damages. There was no “deplorable abuse of power” arising from the evidence. As such, I saw no reason to go beyond the awards made for the torts themselves.

A FINAL NOTE

[70] I would remind the police that in the exercise of their power to arrest, charge and prosecute, that they should be mindful of the correct procedure and practice required for the several offences on the books (especially the more common ones encountered in routine beat duty) and carry out the correct processes. There needs to be more emphasis on this during initial training and continuous training and reminders for serving members of the force. By better understanding and application of the appropriate steps to take before effecting an arrest, charge and prosecution, our hardworking members of the force can significantly reduce unnecessary confrontation with members of the public, improve relationships with them, reduce litigation and ultimately save the tax payers a fortune in damages and other litigation costs that have to be expended to defend these suits.

CONCLUSION

[71] I am satisfied that the Claimant is entitled to the relief sought in his claim. There was no lawful basis for his arrest, detention, charge and prosecution. I am satisfied that he was assaulted in the process of his unlawful arrest.

DISPOSITION

- 1 Judgment for the Claimant against the Defendants.
- 2 Damages to the Claimant assessed as follows:
 - a. General Damages for Malicious Prosecution - \$350,000.00 with interest thereon at 3% from the 7th March 2018 to the 24th March 2025.
 - b. General Damages for False Imprisonment - \$400,000.00 with interest thereon at 3% from the 7th March 2018 to the 24th March 2025.
 - c. General Damages for pain and suffering for Assault - \$500,000.00 with interest thereon at 3% from the 7th March 2018 to the 24th March 2025.

- d. Special Damages in the sum of \$5,000.00 with interest thereon at 3% from the 27th March 2014 to the 24th March 2025.
- 3 Costs to the Claimant to be taxed if not agreed.

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Dale Staple
Puisne Judge