

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. S415/1992

BETWEEN	LEROY SAMUELS	PLAINTIFF
A N D	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

Dennis Daly Q.C. instructed by Daly, Thwaites & Campbell for Plaintiff

David Higgins instructed by the Director of State Proceedings for the Defendant.

Heard: 16th September, 1st October and
11th November, 1994

Judgment

Reckord, J.

The defendant in this action entered an appearance and having failed to file a defence, an interlocutory judgment was entered accordingly in favour of the plaintiff and the matter came before me for assessment of damages.

The facts are not without some importance and received nationwide attention on the 24th of October, 1992, when there were announcements by all the media houses that three men who were locked up in the Constant Spring Police Station along with some 16 others in the same cell had died in the cell apparently from suffocation due to overcrowding.

This plaintiff is one of the 16 who survived this ordeal and I am informed that of several actions that have been filed arising from this incident this the first to come up for hearing.

The plaintiff testified that at about 10:00 a.m. on the 22nd of October, 1992, he was walking along Grants Pen Road in St. Andrew when he was stopped by a number of policemen who questioned him as to where he was going and then ordered him to sit on the sidewalk along with others. They were kept sitting in hot sun for about two hours and then ordered into a police truck where other young men were and about 40 of them were driven to the Constant Spring Police Station

There they were put in a room and their names and addresses were taken and they were all finger-printed. They complained to the police that they had done nothing to deserve this treatment but were given the reply that when the finger-prints results were known "those who don't do anything will be let out and those who do anything will stay." About eleven of them including the plaintiff were placed in a cage in the guard-room. They were packed up, could not move freely, they had to struggle to get out when their names were called.

That same day at about 6:00 p.m. they were all relieved of their shoe laces and belts and placed in three cells. Eighteen young men including the plaintiff were placed in the number 3 cell. This cell was 7 feet wide and 8 feet long. It had no windows. Three sides of the cell were block concrete wall. One concrete bench was in this cell and the door was made of grill bars with sheet metal inside and outside. There was air space of about one inch under the door - about 20 holes were in the upper half of the door. It was not possible to stand up without touching someone else. They all remained in that cell for that night without any food or drink being offered to them. Because of the crowded conditions the plaintiff never slept that night.

The following morning tea was served to them in the passage but the plaintiff never had any. Afterwards they were returned to the cell and locked up. Inside was hot. His clothes, like all the others, were wet from perspiration. The walls of the cell were sweating and water was dripping from it. They beat on the cell door and called for assistance.

At lunch time the cell door was opened and they were served lunch in the passage. They protested returning into the cell and a policeman hit one of them with his baton. They were given brooms which they used to sweep the cell. They were persuaded to return into the cell and entertained themselves by 'Dee jaying'. One man from one of the other cells was put with them in number 3 cell increasing their number to nineteen. Although those in number 1 and two cells were served supper, none was served to the occupants of cell number 3.

Family members had also brought food for some of them but those in number 3 cell never received any. During the night they beat on the doors and called for food and water. They even shouted 'man going to dead in here'. The plaintiff testified that because of thirst, he had to drink his urine. He felt as if he was going to die and subsequently lost consciousness.

He regained consciousness on the morning of the 3rd day when he found himself in the bathroom. The others were outside the cell and were getting food. He got food last. He drank some water but refused the food as it was cold and appeared to have been from overnight. He was told about three of his friends who were in the cell with him and he never saw them alive again - Agana Barrett, Ian Forbes and Varrell Brown. He attended their funerals. They were never put back in the cells on the third day and after police had taken statements from them - they were released from custody. He was vomiting, he was weak and could not stand up.

After his release he visited a doctor and got treatment. He spent two weeks in bed as he was weak. His left ear was hurting him.

The plaintiff said he had to throw away the clothes he had on in the cell as they were not good again. They were:-

one pair velvet jeans valued	-	\$1,200.00
a 'Bulls' ganzi valued	-	350.00
1 pair underpants valued	-	120.00
1 pair of brief valued	-	70.00
1 pair of Patrick Ewin shoes	-	<u>2,000.00</u>
		\$3,740.00

He had never been convicted of any criminal offence and was not charged for any offence on this occasion.

Under cross-examination the plaintiff said he never made any attempt to wash his clothes as his mother with whom he lived had thrown them away.

This was the case for the plaintiff.

Mr. Higgins informed the Court he was not calling any witness on behalf of the defendant and rested his case.

Mr. Daly in his submission referred the Court to the Statement of Claim filed claiming damages for false imprisonment, assault, and breach of constitutional rights. On claim for false imprisonment, the plaintiff had been deprived of his liberty from 10:00 a.m. the Thursday to mid-morning on the Saturday and suggested an award of \$50,000.00.

The taking of the plaintiff's finger-print was an assault and because he suffered no physical injury from this assault he submitted that a 'nominal' award of \$10,000.00 would be justified.

The plaintiff based his strongest claim for a breach of his constitutional rights. Mr. Daly submitted that from the evidence the plaintiff had been subjected to inhuman and degrading treatment in breach of Section 17 of the Constitution. He asked for an award of not less than \$500,000.00.

The adjournment was taken at this stage to allow Mr. Daly an opportunity to produce any authority as to awards under this heading as he was not aware of any such claim in the Supreme Court of Jamaica.

When we resumed hearing a month later Mr. Daly referred the Court to a recent judgment of the Supreme Court of the Commonwealth of the Bahamas on the 22nd of June, 1994 - See Suit No. 1131/87 Tamara Merson vs. Drexel Cartwright and the Attorney General (un-reported). There the plaintiff, a female visitor to the island, was awarded a sum of \$280,000.00 for General Damages which included \$100,000.00 for breach of her constitutional rights by the Bahamian Police.

The instant case was a far worst case than the Bahamian case Mr. Daly submitted. He asked the Court to take judicial notice that the Bahamian Dollar was equivalent to the United States Dollar. Mr. Daly further claimed an award of \$100,000.00 for exemplary damages as punitive sanction against the defendant.

Finally Mr. Daly submitted that the Court in making its award ought not to be concerned with the possible inconvenience of the defendant by the fact that there are other claims of a similar nature pending against the said defendant.

On behalf of the defendant Mr. Higgins referred the Court to a number of claims made under the heading of false imprisonment in the Supreme Court and suggested an award between \$10,000.00 to \$15,000.00.

In another case heard on the 11.10.93 - \$64,000.00 was awarded to a shopkeeper for false imprisonment who spent 2 days in custody with 10 other persons where there was nothing to sleep on re C/L G009/87 - Peter Gayle vs The Attorney General et al - He suggested a sum of \$80,000.00 for Aggravated damages.

With reference to claim for exemplary damages Mr. Higgins said that this fell under the Rookes vs. Bernard principles - Police acting under arbitrary, oppressive or unconstitutional manner. However, if award for compensatory damages was sufficient, exemplary damages ought not to be awarded. See McGregor on Damages, Chap. 11. page 268. In any event, exemplary damages must be moderate and the Court should look at the means of the defendant when making an award under this heading. It was his view that an award of \$50,000.00 would be adequate.

It was his submission that any award for constitutional breaches should be made under the head of exemplary damages and not separately and asked the Court to note that in the Bahamian case no specific amount was awarded for exemplary damages and in the prayer of this case there was no separate claim for breach of constitutional rights.

For damages for assault he suggested a nominal award of \$1,000.00. Finally, he submitted that a total award of \$140,000.00 would be sufficient to cover general damages. He was making no submissions on the claims for special damages.

The Assessment

The plaintiff has claimed damages for assault, false imprisonment and breach of his constitutional rights in that he was subjected to inhuman and degrading treatment and flowing from these additional claims for aggravated and exemplary damages.

Re: Claim for Assault

What was the nature of the assault? The evidence disclosed that the plaintiff was finger-printed.

This seems to be the only act of assault that the plaintiff is complaining of. Mr. Daly asked for a 'nominal' award of \$10,000.00 as the plaintiff suffered no physical injury from this act. However, the police are aware that they have no authority to take a person's finger-print without an order of the Court. I will therefore award the sum of \$20,000.00.

Re: Claim for False Imprisonment

From the evidence the plaintiff was held from 10:00 a.m. on Thursday and released about mid-morning on Saturday. This is approximately 48 hours over a 3 day period. Counsel for the plaintiff claimed \$50,000.00. Counsel for the defendant thought a sum between \$10,000.00 and \$15,000.00 would be appropriate.

This was a most unusual case. The plaintiff and others were not imprisoned for any suspected offences as is often the case. They were just locked up. In my view an award of \$50,000.00 is justified.

Breach of Constitutional Rights

In the Bahamian case of Merson v. Cartwright and the Attorney General (Supra) the plaintiff a 29 year old teacher had visited the Bahamas from the United States of America with her sick father. One day while the plaintiff was alone at the house where she was staying the police arrived and demanded they be let in. They showed her a search warrant. She tried to make a call on the telephone but the police prevented her. She attempted to enter her room to change her clothes as she was then clad in bathing suit only but this also was refused. They commanded her to accompany them during a search they carried out on the premises. Nothing incriminating was found. Still so dressed she was taken to the police station but at no time was she guarded or escorted by a female police officer. She was placed in a cell block which had a few small holes for ventilation. It was very hot being of August and humidity was very high. The plaintiff was hot and sweating and was nauseated by the stench in the general cell. She was not allowed to use the bathroom at first. One compassionate officer brought her two tins of soda when she complained of being thirsty.

When she was eventually allowed to use the bathroom there was standing water on the floor, the water closet was blocked and had overflowed. There was no tissue and no water or soap with which to wash her hands. Later that night two male juveniles were placed in the cell with her. A friend who visited her and brought blanket and pillow was not allowed to see the plaintiff. She never slept that night because of fear for her personal safety and because of the uncomfortable nature of the accommodation. The bench to which she was assigned was narrow and cock roaches got into her hair and trying to get into her nose and mouth.

On the second day she was kept locked in a general cell with 12 male prisoners and one or more of the male prisoners defecated on the floor while one juvenile vomited and one male adult masturbated. Because of the hot day the plaintiff took turn with others putting their faces to the holes in the cell door to try to get some fresh air. The plaintiff was not fed by the police while she was in custody. When she needed to use the bath a male police escorted her there though she had to leave the door open. This officer showed some decency by turning his back.

The trial Judge Mr. Justice Sawyer said:

"In light of all these facts, which I have found to have been proven to the standard required, I had no difficulty in deciding that the plaintiff had been treated inhumanly --- Here, the plaintiff, even if she had been lawfully arrested was a person entitled to the benefit of the ~~now~~ constitutional presumption of innocence and certainly not to be treated in the fashion in which she was in fact treated as if she were the most notorious fellow or worse.

In my view it is difficult to think of any circumstances in a supposedly country which at the time was purporting itself to be moving **towards** a First World Status in terms of financial institutions which could be considered more inhuman than the circumstances so vividly described by the plaintiff and which she poignantly **equated** to the notorious "Black Hole of **Calcutta**".

In my view she is entitled to damages for the cruel and inhuman treatment she received at the hands of the police generally and of the first defendant in particular".

The judge went on to say -----

"The fact that liability has never been conceded in respect of the torts of false imprisonment, assault and battery or malicious prosecution, nor has any genuine apology been offered, I can only view the conduct of the 1st defendant in particular as high-handed and outrageous. Furthermore, that conduct showed an extreme disregard for rule of law and the right of the plaintiff to the protection of the law. I therefore hold that the damages awarded in this case should include a reasonable sum by way of exemplary damages."

He awarded her damages for assault, battery and false

imprisonment	-	\$90,000.00
Damages for malicious prosecution	-	\$90,000.00
Breaches for plaintiff's constitutional rights	-	\$100,000.00.

Section 17(1) the Constitution of Jamaica states:-

"No person shall be subjected to torture or to inhuman or degrading punishment or other treatment".

In this case members of the Jamaica Constabulary Force who are employees of the Government arbitrarily and without any justification took the plaintiff and others from the public road, herded them into a police lorry and took them against their will to the police station where they were finger-printed without any Court order and then packed them like sardines into a cell 8 feet by 7 feet. I do not propose to repeat the evidence in details suffice it to say that there was an abundance of evidence to support the claims that the plaintiff had been subjected to inhuman treatment contrary to the provisions of the Constitution.

Counsel for the plaintiff asked for an award of not less than half million dollars, while defence counsel suggested \$50,000.00 by way of exemplary damages.

In my view an award for exemplary damages where appropriate should be made separate from any other award because exemplary damages are in the nature of a penalty and a defendant should be aware what the penalty is for his wrongdoing. The constitutional rights of the plaintiff were blatantly infringed. Not only were they inhuman but they were oppressive also. But is the plaintiff entitled to an award under this head?

Section 25 of the Constitution of Jamaica under which this claim for breaches of constitutional rights was laid provides as follows in sub-section (1) and (2):-

25(1) "Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of section 14 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of, any of the provisions of the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled.

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law".

Neither counsel in this case referred to the proviso in their addresses.

In the case of Leonard Graham vs. The Attorney General - S.C.C.A No.6/88, (unreported), the question of a claim for breaches of constitutional rights was discussed. The plaintiff's action in that case arose after he was charged for murder and was committed for trial at the Circuit Court and remanded in custody without any preliminary examination being conducted. He sought redress seeking, firstly, a declaration that his incarceration was unconstitutional being contrary to Section 15(1) of the Constitution and secondly, an award of compensation pursuant to Section 25 of the Constitution.

Under the provision of section 79 of the Justices of the Peace Jurisdiction Act, any person who is injured by "any act done by a Justice in a matter of which by law he has no jurisdiction" may maintain an action against such Justice.

When the matter reached the Court of Appeal Carey J. A. said:-

"The action of the Resident Magistrate in making an order depriving the appellant counsel within the provisions of Section 79 of the Justices of the Peace Jurisdiction Act. The Resident Magistrate had no power to remand the appellant into custody indefinitely. See Section 39 of the Justices' of the Peace Jurisdiction Act where time limits are prescribed. In the light of Section 79 it would seem that adequate redress was available to the appellant".

The learned judge went to say:-

"He was at liberty to bring his action for damages which is his right to point out is an action at common law. Section 79 merely enshrining the common law".

He went on further to say:-

"In my view, section 79 of the Justices of the Peace Jurisdiction Act is a complete answer to the circumstances of this case. The Constitutional Court is not constrained to give redress merely because an individual selects that forum and proves an infringement of some human right. The proviso in terms obliges the Court to decline jurisdiction if adequate means of redress are available under law. There is authority for venturing to suggest that Section 25 in providing redress for infringements of fundamental human rights ought to be reserved for breaches where redress is not otherwise available". See Harrikisson v. Attorney General (1979) 31 W.I.R 348.

For his part Campbell J. A. added:-

"It was a plain and straight-forward case of detention not authorised by Section 15(1) of the Constitution. The appellant sought redress under Section 25 of the Constitution but he is caught by the proviso to that section because he could equally have timeously had the order of detention set aside by the Supreme Court and thereafter secure redress namely compensatory damages under Section 79 of the aforesaid Justices of the Peace Jurisdiction Act".

I am satisfied that adequate means of redress were available to the plaintiff in this case. He is caught by the proviso and accordingly his claim for an award for breach of his constitutional rights cannot be granted.

I did not had the benefit of looking at the Bahamian Constitution and therefore I am not aware if there is any such provision in the Constitution of that country.

Re: Exemplary Damages

The learned author and leading authority on damages in the fiftieth edition of McGregor on Damages at page 254 states:-

"The primary object of an award of damages is to compensate the plaintiff for the harm done to him; a possible secondary object is to punish the defendant for his conduct in inflicting that harm. Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damages which are variously called exemplary damages, punitive damages, vindictive damages, and even retributory damages and comes into play whenever the defendant's conduct is sufficiently outrageous to merit punishment, as where it discloses malice, fraud, cruelty, insolence or the like".

In Rookes vs. Bernard (1964) A/C 1189, the House of Lords held that one of the categories of cases in which exemplary damages may be awarded is where there has been oppressive arbitrary or unconstitutional action by the servants of the Government. The instant case falls squarely within this category. Lord Delvin speaking for all their Lordships, stated three considerations which should always be borne in mind when awards of exemplary damages are in issue. Firstly, the plaintiff must be the victim of the punishable behaviour - secondly, the award should be moderate, thirdly, the means of the defendant. Other considerations include the conduct of the defendant down to the date of trial.

While there has been nothing from the evidence to indicate that any apology to the plaintiff has been forthcoming from the police, the fact that they have filed no defence to the action shows that they have not tried to justify their conduct.

In a recently concluded case in the Supreme Court before Karl Harrison J. (Jg.) an award of \$50,000.00 was made for exemplary damages because of oppressive behaviour by soldiers of the Jamaica Defence Force. Ses. Suit C/L 0071/88 Abraham Grant v. The Attorney General.

After being arrested the plaintiff was kept in the broiling sun for over two hours. He was denied food and water; he was not able to sleep because of the cramped condition of the cell. He became ill and subsequently lost consciousness apparently from insufficient air; calls to the police for

relief from the conditions were ignored; he has received no apologies for the wrongs done to him. After careful consideration of these and other evidence and of the criteria for making awards under this head an award of \$100,000.00 is made for exemplary damages because of the oppressive arbitrary and unconstitutional actions by the police.

In view of this award I decline to make a separate award for aggravated damages.

To summarise, the awards are as follows:-

Damages for Assault	-	\$20,000.00
Damages for false imprisonment	-	50,000.00
Exemplary Damages	-	<u>100,000.00</u>
Total for general damages	-	\$170,000.00
Special damages	-	3,740.00

There shall be interest of 6% per annum on general damages from date of the service of the Writ up to today. On special damages interest to be 6% per annum from 22.10.92 to today.

The plaintiff is to have his cost which is to be taxed if not agreed.

Before leaving this matter I venture to think that it is appropriate to make some general comments. Learned Counsel for the plaintiff informed the Court on the last day of hearing that up to that time no form of apology had come to the plaintiff from the Constant Spring Police, or the Police High Command or from any other source on their behalf. I would have thought that from the moment that the defendant had decided, quite properly in my view, not to contest these issues, that letters of condolences and apologies would have been issued to all concerned. It appears that nothing like this happened in this case, which is a pity. This would have been a mitigating factor had the defendant done so. As I said at the beginning this matter received nationwide attention. It was the centre of controversy for several weeks. Be that as it may, the defendant by not contesting, was in effect, admitting that the police were responsible. All those who conceived this plan, all those who directed it and all those who actually took part in this operation should hang their heads in shame. It was indeed a sorry day in the history of Jamaica and no doubt will remain a stain which will continue to haunt the Jamaican Police for years to come.