



**[2025] JMSC Civ 119**

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

**CIVIL DIVISION**

**CLAIM NO. 2018HCV02611**

<b>BETWEEN</b>	<b>DERRICK YORKE</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MAGIVA WATT</b>	<b>FIRST DEFENDANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL OF JAMAICA</b>	<b>SECOND DEFENDANT</b>

**IN OPEN COURT**

**Mrs Symone Lawrence-Henry instructed by Murray & Tucker for the Claimant**

**Mrs Kristina Jones instructed by the Director of State Proceedings for the Defendants**

**Heard: February 10 & September 25, 2025**

**Tort – False Imprisonment – Malicious Prosecution – Whether Reasonable And Probable Cause – Arrest of claimant when reissued summons to be served on him**

**Sections 13 & 33 of the Constabulary Force Act**

**WINT- BLAIR J**

**[1]** On the day of trial, as a preliminary point, Mrs Kristina Jones submitted that the first defendant is no longer a serving member of the Jamaica Constabulary Force and efforts to locate him were unsuccessful. The defendant would call no evidence.

## **The Claim**

- [2] The claimant claims damages for the torts of false imprisonment and malicious prosecution. He also alleges a breach of his constitutional rights. He seeks aggravated damages against the first and second defendant jointly and/or severally in that on or about the 4th day of June 2015, the first defendant, the servant and/or agent of the second defendant in the performance or purported performance of his duties as a member of the Jamaica Constabulary Force, without any reasonable and/or probable cause unlawfully and intentionally arrested him, and transported him to the Brown's Town Police Station and there detained the claimant for one hour. As a consequence, the claimant was deprived of his liberty and sustained shock, mental anguish, and embarrassment, resulting in loss and damages.

## **The Evidence**

- [3] The claimant, Derrick Anthony Yorke, testified that he is a 65-year-old farmer married to Verona Yorke. During their marriage, his brother-in-law, Etbern Gooden, fell ill, and they cared for him. Before his passing, he transferred the land located at Retirement, Valley Piece in Saint Ann ("the said land") to them. This gift was documented in writing and signed in the presence of Justice of the Peace Ivan Anderson. They subsequently buried Mr Gooden on that same parcel of land.
- [4] Around late December 2014 or early 2015, one Jemar Barrett died. Claudia Linton, who is Mrs Yorke's niece, wished to bury Mr Barrett on the claimant's land as previously described, but neither the claimant nor his wife allowed it. After the initial request by Ms Linton, the claimant and his wife visited the Saint Ann Parish Council to inform them that there would be no burial on the land. A letter was given to the claimant to be served on Ms Linton by a police officer.
- [5] On or about April 8, 2015, Mr Yorke was contacted by a representative of the Saint Ann Parish Council. Upon arrival at the said land, he observed the representative,

along with a police officer, Ms Linton and a crowd. Ms Linton was preparing to take measurements for Mr Barrett's grave.

- [6]** The claimant called his wife, who was at church, asking her to come to the land. When she arrived, Ms Linton started arguing with Mrs Yorke, making unpleasant and distasteful comments. Ms Linton stood directly in front of Mrs Yorke and aggressively pointed her fingers in Mrs Yorke's face.
- [7]** Fearing for his wife's safety, Mr Yorke said he stepped between the women to prevent an attack. In response, Ms Linton 'juck' him under his right eye with her finger and again under his throat as she continued arguing. When he felt her finger on the skin under his throat, he remembered that he had a knife, which he took out and held up in front of him and his wife as they started backing away, retreating to avoid confrontation.
- [8]** The knife was not pointed at Ms Linton, and he had no intention of harming her. He wanted to give them space to retreat safely. His wife was behind him as they stepped back, watching Ms Linton, who continued to approach and argue. When they reached a safe distance, he and his wife left the property. This was around 1:00 p.m.
- [9]** About two hours later, while at home, District Constables Clara Green and Gossy Simms arrived at the house and informed him that they were there to detain him for the incident with Ms Linton. The claimant told them he would not go, and they left.
- [10]** On or about Friday, May 1, 2015, when the claimant returned home from working on the farm at Valley Piece, his wife handed him a summons that had been served on her that day, but was intended for him. She read it to the claimant, he was summoned to appear at the Brown's Town Resident Magistrates' Court on May 4, 2015, to answer to charges of assault at common law brought against him by Claudia Linton.

- [11] On Monday, May 4, 2015, Mr Yorke said he and his wife attended court at the Brown's Town Resident Magistrates' Court. They arrived at about 9:30 a.m., before the court started. When the court started, they sat in the courtroom listening for his name. They only left when the court took a break for lunch, at which time they went to get something to eat and returned once the court resumed. They then sat in the courtroom, where they remained until the court adjourned for the day, but did not hear the claimant's name called. At the end of the court day, Mr Yorke and his wife were the only ones left in the courtroom, and the Judge sent the Clerk to see if there was any file for him or if he had any need to appear in court that day. The Clerk checked and could not find a file for him, so the Judge informed him that there was no matter against him, and he could go home. He left the courthouse with his wife and went straight home. When they got home, it was dark. Retirement District is approximately half an hour from Brown's Town.
- [12] A few days later, while working on his farm, Constable Magiva Watt and District Constable Simms came to arrest him, but he continued working on his farm, and they left. A few days after that, while he was walking on the road in Retirement district, Constable Magiva Watt saw him and demanded that the claimant go to the police station with him, but the claimant told him of the events that took place at court on May 4, 2015 and did not go with him. The claimant said this made him feel harassed.
- [13] On or about June 4, 2015, at approximately 8:00 a.m., the claimant had just returned from feeding the cows and was wearing dirty working clothes and water boots. He was talking to Mr Duncan at the side of the road in front of his yard. He observed a marked police vehicle stop in front of them. There were two policemen in the vehicle. He did not know the uniformed driver, Constable Watt, was in plain clothes. They both came out of the vehicle, and Constable Watt attempted to force the claimant into the vehicle, saying he was going to arrest him for insulting the bench and that there was a warrant for his arrest. No warrant was ever produced or shown to Mr Yorke.

- [14] The claimant told Constable Watt that there could be no warrant for his arrest because he had appeared in court on May 4, 2015, and as there was no case against him, the Judge had sent him home. Constable Watt insisted that the claimant go into the vehicle. The claimant continued to object, but Mr Duncan said something to him, causing him to cease his objections. Mr Yorke asked Constable Watt if he could go inside to change his dirty clothes, as he had grass lice on him, but this was refused. So, Mr Yorke asked Mr Duncan to go to his wife, who was inside the house, to get clothes for him, which he did. He came back with a shirt, pants, and shoes. Mrs Yorke brought a belt. He undressed down to his underpants at the side of the road and changed into the clean clothes in sight of passersby and his children. Mr Duncan has since died. After he was dressed, the police officers put the claimant in the back of the police vehicle and drove away.
- [15] The claimant said he was first taken to Watt Town Police Station, about five minutes from his home. There, he was made to sign his name in a book, and Constable Watt handcuffed his hands to the front. He spent about fifteen minutes at the Watt Town Police Station before being returned to the police vehicle, and he and the same two officers then made their way to the Brown's Town Resident Magistrates' Court.
- [16] When they arrived at the Court, he had to walk in front of Constable Watt into the courthouse still wearing the handcuffs, which were removed when he was placed into the holding area. There were about seven men, including himself in the holding area. The holding area was hot, and it smelled 'mouldy', not very clean, as the walls were dirty and there were cobwebs. There was nowhere to sit, he had to remain standing the entire time that he was in there. He was embarrassed, worried, and disappointed, and he felt down about what was happening to him. He was also tired and hungry, and grass lice were biting his skin because he was not clean since he had only changed his clothes. He was in the holding area for about an hour or two. It was hard to keep track of the time; he just knew that they left his house at about 8:30 a.m. and did not return until about 5:00 p.m. that evening.

- [17] After some time in the holding area, he was brought upstairs to the courtroom and placed in the dock. Constable Watt was in the courtroom as well. There was no warrant there for him, and the Judge told Constable Watt that for him to bring the claimant before the court again, a new summons would have to be prepared. He was brought downstairs and placed on a bench in the waiting area, with a police officer standing guard, while Constable Watt went through the process of obtaining the new summons, which was served on him the same day. This summons required the claimant to attend court on July 6, 2015.
- [18] After being released, Constable Watt and the other police officer offered to take the Yorkes back to Watt Town but the claimant refused and instead they took public transportation home because he was upset and feeling very distrustful.
- [19] The claimant said he and his wife attended court on July 6, 2015. Constable Watt was there as the Investigating Officer; however, Claudia Linton, who had succeeded in burying Mr Barrett on their property without their permission, was not there. The case was adjourned to another date. He went to court on three other court dates after that. Constable Watt was always there, but Claudia Linton only attended on the second-to-last date. On the final occasion, when she still did not appear, Constable Watt informed the court that Claudia Linton had migrated, and the case was dismissed on or about October 2016.
- [20] By reason of the aforesaid matters, the claimant claims under the torts of false imprisonment and malicious prosecution, by which he sustained severe shock, embarrassment, mental anguish, loss, and damages.
- [21] During cross-examination, the claimant recalled signing the particulars of claim, which stated that he had been detained for just one hour in the holding area at Browns Town Resident Magistrate's Court. The claimant had said in evidence that Constable Watt and his fellow officer had taken him to Watt Town Police Station. It was suggested that this detail was omitted from the particulars of claim, to which the claimant responded that the constable was the one who placed him there and

mentioned it. When shown the document, the claimant agreed that this information was absent from the particulars of claim, but maintained that his statement described what occurred. It was also suggested that he never mentioned this in his particulars of claim because it is false, with which he disagreed.

- [22] It was suggested that the claimant was asking the court to believe that the police visited twice to arrest him, but did not do so because he resisted. The claimant replied that this was because he had no case before the court. He insisted that he was truthful about the police officers coming to arrest him on two occasions. His testimony is that the officers did not arrest him because he did not go to them. When he later appeared in court, he was informed that there was no case pending against him and that no warrant had been issued.
- [23] Regarding the incident with Ms Linton, the claimant explained that he took out a knife and held it up in front of himself. Prior to this, there was an argument between Ms Linton and his wife. He described Ms Linton as being aggressive. Fearing for his wife's safety and worried that Ms Linton might become violent, he felt compelled to intervene to protect his wife.
- [24] The claimant explained that he went between his wife and Ms Linton, put his wife behind him, and, after being "juck" in the eye and throat, he told his wife to walk behind him. He then turned around to face Ms Linton, who was still behaving aggressively. When he saw Ms Linton coming towards him, he realised he needed to find a way to frighten her off and leave the property, because she was his niece. He did nothing to hurt her because they are "one family". He only needed to scare her so that he and his wife could get away from her at that moment.
- [25] It was suggested that he took it a step further by holding the knife to Ms Linton's throat, but the claimant denied this, stating that he was far away from her and that he and his wife only wanted to leave the property and let Ms Linton remain there. It was further suggested that he told Ms Linton he would "bus' her windpipe," but the claimant denied saying this.

- [26] The claimant stated that, although he couldn't recall the exact date, it was around June 4, 2015, when Constable Watt visited his yard. Constable Watt tried to force him into a police vehicle, claiming to arrest him due to a warrant, although he did not show the warrant and only said the claimant had "insulted the bench." The claimant informed Constable Watt that there was no warrant, as he had appeared in court on May 4, 2015. Despite this, Constable Watt ordered him into the vehicle. After initially objecting, the claimant eventually complied, requesting to change out of his farm clothes. He asked his wife to get some clothes, but Constable Watt insisted he couldn't go into the house, so he had to change on the side of the road. The officers, in uniform and with guns, ordered him to change, so he did.
- [27] The claimant was further asked about his willingness to get into the vehicle. He responded that he felt he had no choice after being roughed up and changing his clothes. When questioned about what "roughed up" meant, he explained that Constable Watt had "hailed and pulled him", making it clear he had to comply. The claimant said that Constable Watt had physically "put hands on him." The claimant confirmed that he had experienced this himself, knows what transpired, and asserts that he was truthful.
- [28] When Constable Watt took him to the Brown's Town court, he received another summons with the next court date fixed for July 6, 2015. He was allowed to go free after the court visit. It was suggested that Constable Watt asked the claimant to accompany him to the Brown's Town courthouse for the purpose of obtaining a new summons to attend court because the claimant failed to attend court when the matter was set for hearing in June 2015. The claimant denied this, stating that he attended every court date he was given and had not insulted the bench. When the case against the claimant finally started in July 2015, Constable Watt attended every single hearing date. The case was dismissed because Ms Linton did not appear in court; she was living in the United States at the time. It was dismissed in October 2016.



Verona Yorke gave evidence that she is a farmer and housewife, and the wife of the claimant. She confirmed the events as described by the claimant on or about April 8, 2015, Mrs Yorke recalled seeing a police vehicle that day with District Constables Clara Green and Gossy Simms, who asked for her husband. They were looking for him in connection with the Claudia Linton incident.

- [29]** On or around May 1, 2015, she was at her home when a police officer served her a summons for her husband. She noticed it was for him to appear at Brown's Town Resident Magistrates' Court on May 4, 2015, concerning an assault at common law against Claudia Linton. When her husband arrived home, she showed him the summons and read it to him.
- [30]** On May 4, 2015, she accompanied her husband to court; they arrived around 9:30 a.m. When the court opened, they sat in the courtroom waiting for his name to be called. They left during the lunch break and returned to sit in the courtroom when proceedings resumed. They listened throughout the day, waiting for his name to be called, but the court adjourned at about 4:00 p.m. without calling him. They were the last in the courtroom, and the Judge noticed them. Checks were made by the Clerk, but they were allowed to go home because there was no file for her husband.
- [31]** A few days later, she was in her backyard sweeping when Constable Magiva Watt and District Constable Gossy Simms came and asked her for her husband but she told them he was not there, they left.
- [32]** On or around the morning of June 4, 2015, she was in her kitchen. Mr Duncan spoke to her. She handed him a pair of pants, a shirt, and shoes, and she followed him outside. She saw a police vehicle with two officers standing nearby. She also observed her husband standing partially dressed in the front yard beside the road, with dirty clothes at his feet. When he saw her, he sent her to fetch a belt, which she did. Upon returning with the belt, she recalls speaking in tongues. After that, they put her husband in the back of the police vehicle and drove off with him. She went to one Maas Leroy to bail her husband. After they left, she went to the

Brown's Town Resident Magistrates' Court, where she saw her husband sitting on a bench with a police officer close to him. She waited for him, and after he emerged from the courthouse, they went home.

**[33]** They went back to court on July 6, 2015. Although Constable Watt and her husband were present, Claudia Linton did not appear, so her husband was given a second date to return. They went back to court three more times, and the court eventually dismissed the matter in October 2016. She also attended court with Mr Yorke on each occasion, and on each occasion, Constable Watt was present.

**[34]** In cross-examination, she stated in her witness statement that she was the person who received the summons on May 1, 2015, for her husband to appear at court on May 4, 2015. On or around June 4, 2015, she saw a marked police vehicle and two police officers standing close to her husband. She was not privy to any conversation her husband had with the officers at that point because she was not present.

**[35]** She did not see Constable Watt or any other officer put their hands on Mr Yorke. She handed the clothes to Mr Duncan. Afterwards, when she came out, she was sent for a belt. At that point, she did not speak with her husband or any of the officers.

**[36]** Desrene Yorke gave evidence that the claimant is her father. On or about June 4, 2015, she was living at her parents' house in Retirement District, Watt Town, St Ann. She was in her room at about 8:00 a.m. when she heard her mother outside shouting. She saw a police vehicle and two police men, one in uniform and one in plain clothes, near her father, who was in his underpants. Their body language indicated her father was restrained.

**[37]** She saw her father dressing and her mother walking towards him with a belt, shouting in tongues. She didn't want to photograph her father naked, so after he dressed, she took two pictures of him and the men by the police car using her Digicel DL Mobile Phone. The photos, not altered or photoshopped, were properly

taken with the phone functioning correctly as far as she knew. She and her brother watched as the two men left with her father in the police vehicle.

- [38] During cross-examination, she stated she did not see any officer physically restrain Mr Yorke. However, she observed that the officers were physically preventing him from leaving. When asked if her witness statement said this, she replied that, based on the officers' body language, she could tell her father was restricted, and she assumed this was the same as physical restraint.
- [39] The witness in her evidence said she saw an officer force Mr Yorke into the police vehicle. She agreed that the word "force" was not used in her witness statement, the contents of which were true and based on her recollection of that day. The witness ultimately responded after being taxed that she did not see the police men force the claimant, rather they ordered him into the vehicle.
- [40] When she first heard the shouting, which grabbed her attention, she went out on the verandah and saw a marked police vehicle in the front yard. She disagreed with the suggestion that, from where she was standing and the distance she pointed out in the courtroom, she could not have heard any orders being given by the officers to Mr Yorke.

## Submissions

- [41] Counsel for the claimant relied on **Delia Burke v Deputy Superintendent Carol McKenzie v Attorney General of Jamaica**<sup>1</sup> to submit that:

*"In simple terms, false imprisonment arises where a person's liberty is restrained, that is, he is detained against his will without legal justification."*

- [42] It is accepted that it was about 8:00 a.m. when the first defendant approached the claimant at the side of the road on the morning in question. The claimant's

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<sup>1</sup> [2014] JMSC Civ 139

evidence is that he was restrained from leaving in various ways until the officer was through with him at the courthouse. His evidence further shows that he went straight home and he arrived there about 5:00 pm the same evening. The claimant was falsely imprisoned for a total of eight hours in aggravating circumstances. It is admitted that in the pleading and the witness statements, the claimant was in the holding area at the browns Town Parish Court for between one and two hours.

[43] In **Inasu Everaldd Ellis v The Attorney General and Ransford A Fraser**,<sup>2</sup> the claimant was detained for seven hours. The Court of Appeal awarded him \$100, which updates to \$445,652.17 using a CPI of 32.2 for December 2004 and 143.5 for December 2024, amounts to \$445,652.17. The circumstances are sufficiently similar so that the updated award is an appropriate amount for the claimant herein in respect of damages for false imprisonment.

[44] Similar to the **Delia Burke** case, there is sufficient evidence before the court to allow for an award for aggravated damages. For example, in both cases, the claimants were made to change their clothes in front of police officers. In the instant case, the claimant did so by the side of the road in full view of passersby and presumably neighbours. In **Delia Burke**, the award for aggravated damages was \$250,000.00, which updates to \$414,739.88 using CPI of 86.5 for September 2014 and the CPI for December 2024. The updated award is appropriate for the claimant herein.

[45] As per **Rookes v Barnard**,<sup>3</sup> the claimant is also entitled to exemplary damages for the oppressive and unconstitutional action of the first defendant. It would be appropriate for the claimant to receive the same amount as for aggravated damages, being \$414,739.88, on the authority of the **Delia Burke** case.

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<sup>2</sup> (Unreported) SCCA No. 37/01 delivered December 20, 2004

<sup>3</sup> (1964) AC 1129

- [46] Counsel submitted that the defendant no longer relies on its witness statements, and the claim is unchallenged. There is very little that can be considered evidence in this matter. After cross-examination, the claimant remained firm; the witnesses were credible when tested. They each provided accounts that were believable and consistent with the evidence presented in their statements and the pleadings of the claimant in general.
- [47] Regarding malicious prosecution, counsel for the claimant noted that the elements of the tort are outlined in **Wills v Voisin**<sup>4</sup> and submitted that it is clear from the facts that the law was set in motion against the claimant on the charge of assault, and it is trite law that a dismissal of the case against him is a determination of the case in his favour. Insofar as there is no evidence that the first defendant did the necessary due diligence before charging the claimant, he had no reasonable and probable cause to do so, and he could not have had an honest belief in the guilt of the claimant, which is required to satisfy the elements of the tort.
- [48] Section 33 of the Constabulary Force Act allows the claimant to prove in the alternative when making out a case of malicious prosecution. In **Earl Hobbins v The Attorney General and Constable Mark Watson**,<sup>5</sup> the learned Judge found that Constable Watson acted without reasonable and probable cause and with malice because he did not do the necessary investigative work, and he "exhibited no desire to determine whether there was criminal conduct and by whom." This is also true of Constable Watt in this case.
- [49] The time period from service of the first summons in May 2015 to dismissal of the case in October 2016 is eighteen months. In the case of **Maxwell Russell v the Attorney General for Jamaica and Corporal McDonald**,<sup>6</sup> in which the claimant was charged with assault and the case lasted one year, the court awarded

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<sup>4</sup> (1963) 6 WIR 50

<sup>5</sup> Supreme Court Claim Number 1998/H196

<sup>6</sup> Claim Number 2006 HCV 4024 (Delivered on January 18, 2008)

\$250,000.00 in damages for malicious prosecution. One and a half times this award would be appropriate for the claimant herein or \$375,000.00, which updates to \$1,177,516.41 using the CPI of 45.7 for January 2008 and CPI 143.5 for December 2024.

- [50]** The investigating officer, the first defendant, lacked reasonable cause to set the matter in motion as he did. Such cause could only have been established if the investigating officer had conducted proper due diligence regarding the report provided by Ms Linton. There is no evidence in the defendant's case to suggest that Mr Watt spoke to any of the individuals present at the scene of the incident or that he conducted any preliminary interviews with the claimant prior to preparing the summons.
- [51]** It was submitted that there was some malice involved, considering the investigating officer's repeated interactions and promises to arrest the claimant, which could be viewed as harassment. The claimant likely experienced significant embarrassment and emotional distress due to the treatment described. Being forced to remove his clothing down to his underwear outside his home, surrounded by armed police and officers, then being taken to an unhygienic holding area where he stood for two hours, bitten by grass lice—having just come from the farm—would be deeply humiliating for anyone. Therefore, an award of aggravated damages is justified.
- [52]** If this court finds that the defendants are liable, an award should be made for exemplary damages as a deterrent to crown servants, making it clear that what transpired in this matter is unacceptable.
- [53]** In response to the defendant's submissions, counsel submitted that the claimant was not absent on any of his court dates, as Exhibit 1 shows. Further, force is not just the physical laying on of hands on a person. The fact that the police officers refused Mr Yorke his liberty means that he did not go into the vehicle of his own volition; he had no choice.

- [54] Counsel argued that a finding for an award guided by the defendant's submissions of \$65,000 would be inadequate in all the circumstances and urged this court to find for the claimant in the matter and award damages, interest, and costs herein.
- [55] Regarding false imprisonment, counsel for the defendant relied on the cases of **Geraldine Wright v Steve Burton &Anor.**,<sup>7</sup> and **Bryan Green v Sgt. Cochrane &Anor.**,<sup>8</sup> to submit that the claimant's liberty was never restrained by the first defendant. Rather, the claimant accompanied the first defendant to the Brown's Town Parish Court at the request of the first defendant. Therefore, false imprisonment does not arise in this case. Counsel raised the case of **Delroy Thompson v The Attorney General of Jamaica and Anor.**,<sup>9</sup> to note that there are four elements which must be established for a malicious prosecution claim to be successful. In the instant case, the claimant was charged with assault and was discharged when no evidence was offered by the Crown.
- [56] Counsel relied on **Jerome Freckleton v The Attorney General of Jamaica and Ano.**,<sup>10</sup> section 33 of the Constabulary Force Act and **Rennon Walker v Deputy Superintendent Leon Clunis v Attorney General**<sup>11</sup> to submit that the first defendant appreciated a report from the complainant Claudia Linton and found that the claimant may have been guilty of the offence of assault. The fact that no evidence was led by the prosecution is not indicative of malice or unreasonableness in the arrest and charge of the claimant, particularly since the reason for the dismissal of the case was the unavailability of the complainant to act as a witness in the matter. Based on the foregoing, the claim for malicious prosecution should not succeed.

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<sup>7</sup> [2015] JMSC Civ. 237

<sup>8</sup> [2012] JMSC Civ 17

<sup>9</sup> [2016] JMSC Civ. 78

<sup>10</sup> [2018] JMCS Civ. 127

<sup>11</sup> [2016] JMSC Civ. 84

- [57] Notwithstanding the defence of the false imprisonment claim, should the court find that the tort has been made out, a useful authority is **Everton Foster v The Attorney General**.<sup>12</sup> The plaintiff was awarded \$40,000.00 in damages for false imprisonment of three hours. Using the Consumer Price Index (CPI) of 26.6 for July 2003 and the current CPI of 143.5 for December 2024, the award updates to \$215,789.47.
- [58] In **Fabian Gordon v The Attorney General of Jamaica and Constable Sean Johnson**<sup>13</sup> the claimant was falsely imprisoned for four hours and was awarded \$100,000.00. Using the CPI of 56 for September 2009 and the CPI of 143.5 for December 2024, the award updates to \$256,250.00. Given that the claimant claims to have been detained for only one hour, a reduction of the awards in the aforementioned authorities is appropriate. The hourly rate for the period of imprisonment amounts to \$71,929.82 in **Everton Foster** and \$64,062.50 in **Fabian Gordon**. An award of \$65,000.00 is reasonable in the circumstances of this case.
- [59] It is essential to examine the claim as filed and the supporting evidence. Upon review of the claim form and the particulars of the claim, what was pleaded was that the claimant was taken in a marked police vehicle to Browns Town Resident Magistrates' Court, and detained by the first defendant. The particulars of claim speak to a period of one hour, and refers to detention at the Brown's Town Police Station. Counsel for the claimant said there was a distance of half an hour between the claimant's home and the court. However, in review of Mr Yorke's statement, tracing the time frame at paragraph 14, he was brought to the police station, five minutes from his home, where he was held for fifteen minutes and then taken to the court.

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<sup>12</sup> (unreported Suit no: C.L.F-135/1997 delivered July 18, 2003)

<sup>13</sup> (unreported Claim No. 2007 HCV 02436 delivered September 24, 2009)



- [60] In paragraph 16, he says, "I just know we left my house at about 8:30 in the morning and did not return till about 5:00 pm". In paragraph 13, he says he was standing on the side of the road, and he goes into the discussion with Constable Watt. There is no indication in the evidence of when he was taken from his home to the court.
- [61] The defendant's position is that a period of one hour in respect of his detention was specifically pleaded; therefore, for this court to accept a further period between the time of his being picked up and his arrival at the Parish Court is without an evidential basis. Having regard to what is pleaded and the evidence that has been raised in support, there is no basis for the court to go beyond the pleaded one hour of detention.
- [62] Additionally, rule 8.9(a) of the CPR bars this submission as no permission was sought to extend the detention period, and the claim was not amended to reflect a detention period longer than the one hour claimed. Instead, the claimant's counsel by way of submissions presents the witness statement, which indicates a longer period. This court should reject this attempt to alter the pleadings without any application for an amendment.
- [63] Counsel accepted the position, as evidenced by **Bryan Green**, that physical contact is not a prerequisite for a claim in false imprisonment. Rather, the question is whether, in all the circumstances, the plaintiff is led to believe he is not free to leave. The court should have regard to evidence of the claimant himself at paragraph 13 of his witness statement, where he told the first defendant that "*there could be no warrant for my arrest because I went to court on May 4, 2015, and there was no case there for me, and the Judge sent me home. He still insisted on me going into the vehicle. I was continuing to object but Mr. Duncan said something to me as a result of which I stopped objecting and I asked Mr. Watt if I could go inside to change my clothes*". Considering that this was always the claimant's position that the defendant had no reason to take him into custody, and his decision not to object to accompany the first defendant to the court raises doubt as to

whether it could be said that the claimant's liberty was restrained. Even if the court accepts that the restraint had taken place sufficient to ground a claim for false imprisonment, having regard to the evidence, that could only be granted to a period of one hour.

- [64] Counsel further submitted that Desrene Yorke is not a witness of truth. Although her witness statement was limited to the body language of the officers, she attempted to raise for the first time on cross-examination, evidence that she saw Mr Yorke was forced into the police vehicle and that he was ordered into it. Having regard to what she described as the distance between herself and Mr York, there is no truth to her evidence that she heard orders given Mr Yorke.
- [65] The evidence of Verona Yorke is of very little utility. She indicated that Mr Duncan called her, she brought out clothes for the claimant. The most relevant evidence comes from the claimant.
- [66] It is the claimant's submission that the claimant should be compensated for the level of embarrassment from the time he was made to change outdoors to when he was at the court. There is no evidence from Mr Yorke of suffering from any embarrassment at that time. Counsel for the claimant is asking the court to infer this. At paragraph 16, he indicated that the holding area was not clean, it was dirty, had cobwebs, and he was embarrassed and worried. That is the only indication of embarrassment in Mr Yorke's evidence.
- [67] In **Everton Foster v AG**, the plaintiff was imprisoned for three hours, and the court found that there was clearly an injury to his dignity. Considering that the claimant was only detained for one hour, the award should be adjusted to account for this. Likewise, in **Fabian Gordon**, the claimant was at the hospital and prevented from leaving for four hours. The court acknowledged that no two cases are ever exactly alike, and it must arrive at what it considers a fair award. An hourly rate using those authorities as a guide would be \$65,000.00. In **Burke**, the detention period was not as long, so the case would not be helpful in determining the quantum. Still, the

case also confirms that the question of any mental distress would be a relevant consideration. Having regard to the limited evidence in that respect, the proposed award would be fair.

[68] **Roderick Cunningham v Attorney General & Ors.**<sup>14</sup> is authority for the principle that mental distress or anxiety, humiliation or disgrace, inconvenience, indignity and discomfort caused by the charge are among the factors which impact the award for malicious prosecution, along with the seriousness of the offence, the length of the prosecution and the number of court appearances. In the case at bar, the prosecution commenced on July 3, 2015, and ended on October 12, 2016, a period of 1 year and 3 months. The claimant attended court on three occasions.

[69] If the court finds that an award for malicious prosecution is appropriate, counsel relies on **Keith Bent & Ors. v The Attorney General of Jamaica et al.**<sup>15</sup> In that case, the first and second claimants were charged with assaulting the police, resisting arrest and using indecent language. They were awarded \$90,000.00 each for malicious prosecution. Using the CPI of 38.3 for December 2006 and 143.5 for December 2024, the award updates to \$337,206.26.

[70] In **Maxwell Russell v The Attorney General for Jamaica & Anor**,<sup>16</sup> the claimant was charged with assault at common law. He attended court on five occasions over the course of nearly one year. He was awarded \$250,000.00 for malicious prosecution. Using the CPI of 45.7 for January 2008 and 143.5 for December 2024, the award updates to \$785,010.94. Considering the relevant evidence, a moderate increase in the award in the above cases is warranted, taking into account the length of the prosecution in this matter. Notably, there is no evidence of any deleterious effects of the prosecution on the claimant's reputation, nor is there any indication that he suffered disgrace or indignity as a result of the proceedings.

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<sup>14</sup> [2014] JMSC Civ. 30

<sup>15</sup> (unreported Suit Nos. 1998/B 330, B 384 & B 385 'delivered December 19, 2006)

<sup>16</sup> unreported, Claim No. 2006 HCV 4024 delivered 18th January 2008

Accordingly, an award within the range of \$800,000.00 - \$950,000.00 is reasonable under this head.

- [71] It is agreed that the elements set out in **Delroy Thompson** have been specified in the first two elements, as he was charged and later acquitted. There is no dispute in that regard. The issue was whether the prosecution was commenced unreasonably. In **Jerome Freckleton v The Attorney General and Det. Sgt. Maurice Puddie**,<sup>17</sup> it was stated that “[f]or there to be reasonable and probable cause, the accuser must first be aware of the existence of a state of circumstances, which causes him to honestly believe that the accused is probably guilty of the crime he imputes. His awareness of the circumstances may be the result of either his own perception or information received...”.
- [72] When the court considers the complainant’s statement along with the evidence of the claimant regarding the altercation, the circumstances would reasonably lead to the conclusion that an offence of assault occurred. The question for this court is whether a reasonable person would have relied on that information in laying the charge.
- [73] Where a case breaks down or an accused is acquitted, as **Delroy Thompson** indicates, there are many reasons for that taking place and where the prosecution leads no evidence, that is not indicative of malice. In circumstances where it is the evidence that the first defendant was present at all occasions and that it was ultimately dismissed due to the absence of the claimant, this suggests that at all times the first defendant had an interest in the matter. There appeared to be no malicious intent in his conduct.
- [74] The argument that the court should conclude that there was an element of malice based on the claimant's position that he was forced to go to the court, even if the

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<sup>17</sup> [2018] JMSC Civ. 127 [40]

court accepts that to be true, would not equate to a lack of reasonable cause and would not infer malice on the part of the first defendant. The third element of the tort has not been established in the circumstances of the case, and the decision of the first defendant to act on the complainant's report was reasonable in all the circumstances.

[75] In relation to the authorities cited by the claimant, **Hobbins** would not be of great assistance to the court, as counsel has indicated, because the court found that the officer exhibited no desire to inquire into criminal conduct. Those circumstances do not align with this case. Regarding **Maxwell Russel**, it is unclear why an award of 1 ½ times the award is being submitted as appropriate.

[76] Regarding aggravated damages, counsel agreed that such an award as indicated in **Delia Burke** would arise in circumstances where there is reason, having regard to the evidence, to award additional compensation. The award for false imprisonment would be sufficient to take into account any mental distress, embarrassment or otherwise that he would have felt, particularly because there is limited evidence in that regard. An additional award would not be necessary. There is no aggravation of the damage in the instant case that would allow for such an award. That award is being claimed on the basis that he was made to change his clothes, the distinction in this case being that there is no evidence of anxiety from Mr Yorke.

[77] The court is asked to avoid the practice of indexing awards, as it is a matter of discretion for the court to make a conservative award under this heading. On the claim of exemplary damages, based on **Rookes v Bernard** there must be conduct that is so high-ended and oppressive that the court has to show its disapproval, there is nothing on the evidence that merits such an award.

## Issues

1. Whether the defendants are liable for false imprisonment.

2. Whether the defendants are liable for malicious prosecution.
3. If liability is established against the defendants, what is the quantum of damages, if any, to which the claimant is entitled.

## **Discussion**

- [78] I have read and considered the written submissions, for which I am grateful, as they have provided considerable assistance. I intend no disrespect to the industry of counsel; however, I have not included all of the submissions in this decision.
- [79] The defendant called no evidence and rested on their submissions. Before deciding whether the claimant has met the burden of proof on a balance of probabilities that the defendant is liable, I will outline the facts I accept, which will underpin the application of the law. The resolution of the factual disputes depends entirely on the credibility of the witnesses.
- [80] Mr Derrick Yorke admitted to having a knife in his hand; this is therefore a proven fact. He gave an explanation to this court for needing to do so; however, this is not the court which would have made findings of fact in the criminal trial between himself and Ms Linton.
- [81] His witness statement, which stood as his evidence in chief, did not mention Constable Watt roughing him up, nor did it mention being taken to the Watt Town police station. I find that Mr Yorke has taken inconsistent positions regarding where he was taken by the police, which undermines his credibility. His pleadings and evidence are distinct. I also find that there was no warrant for his arrest, as there is no such evidence before this court, nor is there any evidence of an order for a bench warrant.
- [82] The claimant's evidence was that he was forced to change out of his farm clothes on the road. The evidence discloses that this change of clothing was at his request, and clothes were brought out as the police did not allow him into his house. While I can accept that the claimant did not want to go out in his soiled

clothing, it was also at his election that he changed those clothes. Grass lice bit the claimant despite the change of clothes. Additionally, as counsel for the defendant correctly pointed out, Mr Yorke did not indicate whether changing his clothes in full view of the street caused him embarrassment; it was his counsel who made this submission. While the court may infer that he would likely be embarrassed, there is no evidence of this.

- [83]** He also gave evidence that he was forced into the police vehicle. Importantly, Mr Yorke stated that he stopped objecting and went with the police, as noted in his witness statement. He stopped objecting based on something Mr Duncan had said to him; therefore, though Mr Yorke initially resisted, by the time he left with the police, he did not have to be forced or ordered, and I so find.
- [84]** Mrs Verona Yorke, the claimant's wife, testified that she brought clothes out to her husband. She did not see any officer lay hands on him, and after her husband left in the police vehicle, she went to the Browns Town courthouse to wait for him. There is no mention in her evidence of going to the police station at Watt Town to look for her husband there. This is also evidence that is distinct from that of the claimant. I accept that Mr Yorke did not go to the police station at Watt Town; he went to the courthouse, and this undermines his credibility.
- [85]** Their daughter, Desrene Yorke, admitted during cross-examination that she had omitted to say in her witness statement that her father was forced into the police vehicle. She also said that her father left with the police after being ordered to do so; however, she was some distance away and when taxed could only say she heard orders. She said she assumed that the officers' body language was equivalent to physical restraint. In other words, she saw no physical restraint. On the totality of the evidence, I find that there was no physical contact by any officer with Mr Yorke. He submitted to the arrest. Desrene Yorke was not a reliable witness; her evidence did not withstand scrutiny, and she was shaken under cross-examination.

- [86] There is no dispute that Ms Linton had brought a case against the claimant in July 2015. Constable Watt attended all court hearings. The case was ultimately dismissed due to Ms Linton's failure to appear, as she had migrated to the United States.
- [87] The claimant seeks damages for false imprisonment. His evidence was that he was detained in the holding area of the Browns Town Resident Magistrates Court (as it then was) for between one and two hours. The detention lasted from approximately 8:00 am or 8:30 am, as the officers had restricted his movement. The law is that force extends beyond physical contact; the claimant may have gone with them voluntarily, but his liberty was curtailed in that he could not leave. He had no choice. He was released from custody after being served with the summons at around 4:00 pm; therefore, his evidence was that he had been in custody for approximately seven hours.
- [88] There is no dispute that the claimant was held in custody. In the absence of legal justification, the detention of a person against his will constitutes the tort of false imprisonment.
- [89] In **The Attorney General v Glenville Murphy**<sup>18</sup> Harris, JA, stated that:

*“The burden is on the clamant to prove that the police had no lawful justification for his arrest. However, if it is shown that the arrest was unjustifiable and the period of detention unjustifiably lengthy, the onus shifts to the defendant to show whether, in all the circumstances, the period of detention was reasonable – See **Flemming v Det Cpl Myers and the Attorney General.**”*

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<sup>18</sup> [2010] JMCA Civ 50



- [90] In **Flemming v Detective Corporal Myers and The Attorney General**<sup>19</sup> Carey P (Ag) said: “*Where the person arrested is released, upon proof of his innocence or for lack of sufficient evidence **before** being taken to court no wrong is done to him.*” This word “before”, to my mind, means that the police are to base any reasonable suspicion they allege on investigating the report made to them.
- [91] Section 13 of the Constabulary Force Act authorises the police to apprehend anyone reasonably suspected of having committed any offence or who may be charged with having committed an offence. The defence raised in this claim is that the arrest was lawful.
- [92] Pursuant to section 33 of the Constabulary Force Act, as interpreted by **Peter Flemming**, it is for the claimant to prove that, where the police are acting in the execution of their duty, there was no legal justification for his detention as he was arrested without reasonable and probable cause or that he was arrested maliciously.
- [93] Alternatively, if the claimant was initially detained lawfully and it can be demonstrated that he remained in custody for an unduly long period after arrest without being brought before a court, the burden of proof shifts. In that instance, the defendant must then provide evidence to prove that the length of custody was justified and reasonable.
- [94] I find that the claimant’s liberty was restrained by the first defendant and his companion officer; the claimant could not so much as go into the house to change his farm-soiled clothing, as he had requested. The police directed where the claimant should change. This is evidence of the exercise of control over the will, movement and freedom of the claimant. The claimant maintained that he had been

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<sup>19</sup> (1989) 26 JLR 525 at page 530

to court, there was no case against him, he was shown no warrant, and he had missed no court dates.

[95] The summons before the court was endorsed as being reissued on “6.7.15” as the previous summons had been served inmatly on “4.6.15” on Mrs Yorke. There is no endorsement of a bench warrant on any of the court dates on Exhibit 1. This means that the ruse of a bench warrant was used as a means to force the claimant to accompany the police. In my view, there is no justifiable reason for the claimant to have been taken into custody so that he could be personally served with a reissued summons. At all material times, the claimant was being summoned to court.

[96] While section 13 of the Constabulary Force Act authorises the police to apprehend any person who they reasonably suspect to have committed a crime, the fact that the police are empowered to arrest and detain in custody any person on suspicion of having committed an offence does not mean that they are at liberty to do so without lawful justification. This suspicion must be reasonable and the police must show that the arrest was justified. The section reads:

*“13. The duties of the Police under this Act shall be to keep watch by day and by night, to preserve the peace, to detect crime, apprehend **or summon before a Justice**, persons found committing any offence **or whom they may reasonably suspect of having committed any offence, or who may be charged with having committed any offence, to serve and to execute all summonses**, warrants, subpoenas, notices, and criminal processes **issued from any Court of Criminal Justice or by any Justice in a criminal matter** and to do and perform all the duties appertaining to the office of a Constable, but it shall not be lawful to employ any member of the Force in the service of any civil process, or in the levying of rents, rates or taxes for or on behalf of any private person or incorporated company.”* (Emphasis added.)

[97] In this case, section 13 also empowers the police to serve summonses for criminal matters. In the instant case, the issuance of a summons was always the method of securing the attendance of the claimant before the court; it is therefore unclear what justification there is on the evidence for the arrest and detention of the claimant in order to do so.

[98] What is an arrest? The police do not have to have evidence amounting to a prima facie case. An arrest has been defined by Lord Devlin in **Shaman bin Hussien v Chong Fook Kam**<sup>20</sup> as:

*“An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It also occurs when, by words or conduct, he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go. It does not occur when he stops an individual to make inquiries.”*

[99] Brooks, JA (as he then was) in **The Police Federation et al v The Commissioner of the Independent Commission of Investigations & anor**,<sup>21</sup> discussed the common law powers of arrest:

*“[191] Professor Kodilinye, in the fourth edition of his work, Commonwealth Caribbean Tort Law, addresses the issue of the common law right of arrest. He states, in part, at pages 25-26:*

*“At common law, certain powers of arrest without warrant are given to police officers and private citizens. One who carries out an arrest within the scope of any such power will have a good defence to an action for false imprisonment, as well as for assault and battery. It is a cardinal principle, however, that in the absence of statutory*

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<sup>20</sup> [1970] A.C. 942, 947

<sup>21</sup> [2018] JMCA Civ 10

*authority, a police officer has no right or power to detain a person for questioning unless he first arrests him....*

*Common law powers of arrest without warrant may be summarised thus:*

- *A police officer or private citizen may arrest without warrant a person who, in his presence, commits a breach of the peace, or who so conducts himself that he causes a breach of the peace to be reasonably apprehended. **There is no power to arrest after a breach of the peace has terminated, unless the arresting officer or private citizen is in fresh pursuit of the offender or reasonably apprehends a renewal of the breach of the peace.***
- *A police officer or private citizen may arrest without warrant (a) a person who is in the act of committing a felony, and (b) a person whom he suspects on reasonable grounds to have committed a felony. But in (b), **there is a distinction between arrest by a police officer and arrest by a private citizen, in that a private citizen who wishes to justify such an arrest must prove that a felony has actually been committed, whether by the person arrested or by someone else;** and if, in fact, no such felony has been committed, he will be liable for false imprisonment and/or assault and battery. **It will be no defence that he had reasonable grounds for believing the arrestee to be guilty.** A police officer, on the other hand, has a good defence, whether a felony has actually been committed or not, so long as he can show that he had reasonable grounds for suspicion. This is known as the rule in *Walters v WH Smith and Son Ltd* [[1914] 1 KB 595].*

- *A police officer, but not a private citizen, may arrest without warrant any person whom he suspects on reasonable grounds to be about to commit a felony." (Emphasis supplied, italics as in original)."*

[100] A police officer may use reasonable force in circumstances where an individual is resisting a lawful arrest. In the case of **Finn v AG of Jamaica**<sup>22</sup>, Wolfe J (as he then was) said:

*"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."*

[101] However, in this claim, the constable was to serve a summons under section 13 of the Constabulary Force Act. There was no evidence to disclose the grounds for the arrest. The claimant was detained for approximately one hour, as stated in the pleadings; however, the evidence indicates that he was detained from approximately 8:30 am until 5:00 pm for the service of the reissued summons.

[102] There was no application to amend the pleadings at any stage, to enlarge the period of detention, nor did the court hear any submissions from the claimant's counsel, despite this issue being raised by the defendant's counsel in oral submissions at the trial. This means that the court will take the view that the claimant did not wish to enlarge the time the claimant spent in detention, given the evidence adduced at trial. Therefore, the period of detention is at most two hours.

[103] In the case of **Wills v Voisin**, the elements of the tort were set out. In an action for malicious prosecution, to succeed the claimant must prove on a balance of probability the following: 1. That the law was set in motion against him on a charge

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<sup>22</sup> (1981)18 JLR 120

for a criminal offence. 2. That he was acquitted of the charge or that otherwise it was determined in his favour. 3. That when the prosecutor set the law in motion, he was activated by malice or acted without reasonable or probable cause. 4. That he suffered damage as a result. A failure to establish one or more of these elements will result in the claimant failing to establish this tort.

[104] Section 33 of the Constabulary Force Act provides that an action against a constable for acts done in the execution of his office shall be in tort, whether the act was done maliciously or without reasonable or probable cause. The claimant need only bring one or the other cause of action. However, where the claim is against the police, as Forte, JA stated in **Peter Flemming**, in interpreting section 33 of the Constabulary Force Act, the claimant only has to prove one or the other.

[105] The Privy Council in **Trevor Williamson v the Attorney General of Trinidad and Tobago**,<sup>23</sup> set out the law on the torts of false imprisonment and malicious prosecution:

*“11. In order to make out a claim for malicious prosecution, it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to be found in A v NSW [2007] HCA 10; 230 CLR 500, at para 91:*

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<sup>23</sup> [2014] UKPC 29

*“What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law - an ‘illegitimate or oblique motive’. That improper purpose must be the sole or dominant purpose actuating the prosecutor”*

12. *An improper and wrongful motive lies at the heart of the tort, therefore. It must be the driving force behind the prosecution. In other words, it has to be shown that the prosecutor’s motives is for a purpose other than bringing a person to justice: Stevens v Midland Counties Railway Company (1854) 10 Exch 352, 356 per Alderson B and Gibbs v Rea [1998] AC 786, 797D. The wrongful motive involves an intention to manipulate or abuse the legal system Crawford Adjusters Ltd (Cayman) v Sagicor General Insurance (Cayman) Ltd [2013] UKPC 17, [2014] AC 366 at para 101, Gregory v Portsmouth City Council [2000] 1 AC; 426C; Proulx v Quebec [2001] 3 SCR 9. Proving malice is a “high hurdle” for the claimant to pass: Crawford Adjusters para 72a per Lord Wilson.*

13. *Malice can be inferred from a lack of reasonable and probable cause – Brown v Hawkes [1891] 2 QB 718, 723. But a finding of malice is always dependent on the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence.*

14. *On the question of reasonable and probable cause, or the lack of it, a prosecutor must have ‘an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed’: Hicks v Faulkner (1878) 8 QBD 167, 171 per Hawkins J, approved by the House of Lords in Herniman v Smith [1938] AC 305, 316 per Lord Atkin. The honest belief required of the*

*prosecutor is a belief not that the accused is guilty as a matter of certainty, but that there is a proper case to lay before the court: Glinski v McIver [1962] AC 726, 758 per Lord Denning.”*

[106] Malice can be inferred from a lack of reasonable and probable cause and depends on the facts of each case. Where there is no basis for suspicion accompanied by reluctance to proceed with the charge, the inference may be drawn. It is for the tribunal of fact to make a finding on the question of malice. The claimant has established the first two elements of the tort on the evidence. It is not in dispute that the prosecution was commenced on the reissued summons on July 6, 2015 and that he was placed before the court. There were three court dates, and the complainant, Ms Linton, attended on the second-to-last date. She did not attend the final court date on October 12, 2016, when the case was dismissed for want of prosecution.

[107] In the Privy Council case of **Kevin Stuart v Attorney General of Trinidad and Tobago**,<sup>24</sup> the Board considered the correct test of the state of mind of the police officer against whom a claim for malicious prosecution has been brought. Their Lordships made the following observation at paragraph 26, which is relevant to this case:

*“26. Nevertheless, and although nothing turns on it in this case, there is one point on the law which it is helpful to clarify. This concerns the question as to what the police officer’s honest (and reasonably held) belief must be about in the context of deciding whether there is a lack of reasonable and probable cause. It has commonly been stated that the honest belief must be as to the accused’s guilt in respect of the offence charged: see Hicks v Faulkner (1878) 8 QBD 167, 171, per Hawkins J, which was approved by the House of Lords in Herniman v Smith [1938] AC 305. But in the Board’s*

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<sup>24</sup> [2022] UKPC 53



*view, the principled and correct approach was articulated by Lord Denning in the House of Lords in Glinski v McIver [1962] AC 726. He said at pp 758-759:*

*'[T]he word 'guilty' is apt to be misleading. It suggests that in order to have reasonable and probable cause, a man who brings a prosecution, be he a police officer or a private individual, must, at his peril, believe in the guilt of the accused. That he must be sure of it, as a jury must, before they convict. Whereas in truth he has only to be satisfied that there is a proper case to lay before the court. ... After all, he cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set up. Guilt or innocence is for the tribunal and not for him ... So also with a police officer. He is concerned to bring to trial every man who should be put on trial, but he is not concerned to convict him. ...No, the truth is that a police officer is only concerned to see that there is a case proper to be laid before the court.'* (Emphasis added.)

- [108]** In assessing these factors both subjectively and objectively, in the claimant's case, the evidence suggests that there was an honest belief on the part of the constable, as he attended all court dates, completed his case file, and prosecuted the matter.
- [109]** The claimant provided his explanation to the constable; he said he had no court date. This explanation at that point did not prove his innocence. The court had ordered the summons to be reissued. That is what Constable Watt was to have done on that fateful morning, he was to serve the reissued summons with the new court date.
- [110]** The claimant's explanation was one that any discerning police officer would expect from someone likely guilty of the offence. Although the explanation might be consistent with innocence, it does not conclusively prove that innocence. In these circumstances, continuing to harbour suspicions about Mr Yorke, even after he

had given his explanation, cannot make Constable Watt's decision to proceed with the charges unreasonable.

**[111]** The claimant admitted to this court that he had been in possession of the knife he was reported to have been carrying at the time of the incident. By doing so, he raises one of the triable issues that the court below, not the officer, was to determine.

**[112]** It has not been demonstrated by Mr Yorke that the police acted without a genuine belief in the prosecution, nor that there was no proper case to put before the court. The claimant has failed to establish the third element of the tort, and therefore, he has failed to establish the tort of malicious prosecution, and I so find.

**[113]** On damages, the period of unlawful detention pleaded was for one hour. The evidence is that the claimant was unlawfully detained and the court is prepared to make an award for the tort of false imprisonment for which the defendants are found liable. The claimant has also alleged a breach of constitutional rights without following the procedure set down by the CPR or providing evidence to support the assertion.

**[114]** In assessing damages under this head, the court is entitled to consider the loss of liberty, any attending injury to hurt pride and feelings, loss of time, loss of social status or reputation, mental anguish and social discredit. In *McGregor on Damages*,<sup>25</sup> the learned editors noted:

*"The details of how damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damages would appear to be injury to liberty, i.e. the loss of time considered primarily from a non pecuniary view point, and the injury to feelings, i.e. the indignity,*

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<sup>25</sup> Harvey McGregor QC, *McGregor on Damages*, 17th edn, para. 37-007

*mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation.”*

**[115]** In **Everton Foster v The Attorney General**,<sup>26</sup> the award for unlawful detention, handed down in July 2003, was Forty Thousand Dollars (\$40,000.00) for three hours of false imprisonment using a CPI of 26.6. Thirty Thousand Dollars, updated using the CPI of July 2025, which is 142.0, amounts to Twenty Thousand One Hundred and Six Dollars per day (\$20,106.00).

**[116]** In **Denese Keane-Madden v The Attorney General of Jamaica and Corporal T. Webster**,<sup>27</sup> damages for six days of unlawful detention were awarded for false imprisonment at One Hundred and Eighty Thousand Dollars (\$180,000.00) for six days, or Thirty Thousand Dollars (\$30,000.00) per day.

**[117]** There is no claim for special damages. In terms of aggravated damages, the manner in which the claimant was taken into custody and the conditions under which he was held would have caused him distress and humiliation. He was not arrested on the day of the purported incident, which was Wednesday, April 8, 2015, but on June 4, 2015, almost two months later. The claimant was not in hiding; he was found in his district and was not said to be causing any difficulties for either the complainant or the police over that period. In light of that, I rely on the dictum of Edwards, J (as she then was) below:

*“[45] Aggravated damages are imposed on a Defendant whose conduct increased the injury to the Claimant, causing distress, embarrassment and or humiliation and damage to reputation. In McGregor on Damages 17th edition, the learned editors, in considering the factors tending to lend support to an award under this head, said at page 1400 paragraph 37-012:*

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<sup>26</sup> Suit No. C.L.F-135/1997 (delivered on July 18, 2003)

<sup>27</sup> [2014] JMSC Civ 23

*“The manner in which the false imprisonment is effected may lead to aggravation or mitigation of the damage and, hence, of the damages. The authorities illustrate in particular the general principle stated by Lawrence L. J. In *Walter v Alltools*, it is stated that any evidence which tends to aggravate or mitigate the damage to a man’s reputation which flows naturally from his imprisonment must be admissible up to the moment when damages are assessed. A false imprisonment does not merely affect a man’s liberty; it also affects his reputation. The damages continue until it is caused to cease by an avowal that the imprisonment was false”.*

*[46] This approach was recognised and adopted by Sykes J in the unreported judgement in **Leeman Anderson v The Attorney General of Jamaica** CLA 017 of 2002, decided July 16th 2004. Aggravated damages are awarded where the defendant's conduct is sufficiently outrageous to merit condemnation and punishment. The outrageous behaviour usually carries features of malice, fraud, cruelty, insolence and the like. See *McGregor on Damages*, 17th edition, at paragraph. 11-0001. Damages under this head are compensatory and not to be lumped with exemplary damages, which are punitive.”*

**[118]** However, considering that there was no need to arrest the claimant to serve a summons on him, and there was no warrant for his arrest, the manner in which the first defendant carried out the arrest has contributed to the increased award in the damages claimed.

**[119]** In **Delia Burke**, McDonald, Bishop, J (as she then was)s in discussing aggravated damages, said:

*“The claimant has claimed aggravated damages in addition to general damages for false imprisonment and trespass. It is settled as a matter of law that aggravated damages are compensatory in nature and are awarded*

*to a claimant for the mental distress, which he suffered owing to the manner in which the defendant has committed the tort, or his motive in so doing, or his conduct subsequent to the tort. So the manner in which the false imprisonment or trespass was effected may lead to an aggravation or mitigation of the damage, and hence damages”.*

[120] Morrison, P., in **John Crosfield v the AG**,<sup>28</sup> in his speech on aggravated damages, having reviewed **Delia Burke**, he continued by saying:

*“[38] Accordingly, unlike exemplary damages, the object of which is to punish the defendant for his or her wrongful conduct, the objective of an award of aggravated damages is compensatory. Such an award is intended to reflect the fact that the particularly egregious nature of the defendant’s conduct has been such as to cause greater – or „aggravated” – damage to the claimant. Therefore, as Lord Woolf MR observed in Thompson -*

*“... Such damages can be awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high-handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted.”*

[121] According to the claimant’s witness statement, he was placed in a mouldy, foul-smelling holding area that was dirty, full of cobwebs, and lacked any place to sit. He had to stand throughout his time there. He felt worried, embarrassed, and disappointed. Grass lice bit him, as he had just come from his farm and had not had a chance to clean himself up. He was not released until 5:00 pm.

[122] In **Herwin Fearon v The Attorney General of Jamaica and Constable Brown**,<sup>29</sup> the court found that the claimant had been unnecessarily detained from the

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<sup>28</sup> [2016] JMCA Civ 40

<sup>29</sup> Claim No C.L 1990/F-046 (Delivered on March 31, 2005)

afternoon of July 3, 1989, to the morning of July 7, 1989. The claimant was awarded \$280,000.00 for three and a half days of detention, or \$80,000.00 per day. **Herwin Fearon** is an older case; however, of the cases cited, the facts more closely resemble the case at bar. Applying that case to these facts, the updated award is \$91,360.00.

**Orders:**

1. Judgment for the claimant.
2. The claimant is awarded general damages of \$20,106.00 with interest at 3% from August 2, 2018, to the date of judgment.
3. The claimant is awarded aggravated damages of \$91,360.20 with interest at 3% from August 2, 2018, to the date of judgment.
4. Costs to the claimant to be agreed or taxed.

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Wint-Blair J