

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 101/06

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (AG.)**

BETWEEN	THE ATTORNEY GENERAL OF JAMAICA	APPELLANT
AND	ARTHUR BAUGH	RESPONDENT

**Ms. Nicola Brown, instructed by Director of State Proceedings for the
appellant**

**Ms. Judith Clarke, instructed by Judith M. Clarke & Company for the
respondent**

23rd & 24th June 2008

ORAL JUDGMENT

PANTON, P.

This is an appeal from the judgment of Mr. Justice Sykes, delivered on October 6, 2006 after a two day trial during the months of June and July 2006.

Before the learned Judge was a claim by one Arthur Baugh against his former employer, Courts (Jamaica) Ltd. and the Attorney General for Jamaica who is the appellant in these proceedings.

Mr. Baugh was arrested and charged with conspiracy to defraud as also larceny in respect of two (2) stereos that were supposedly in a freezer in the warehouse of his employer. In the amended Statement of Claim, paragraph 4(a), it was alleged that "On or about the 19th day of November 1996 the First defendant by its servant and/or agent maliciously laid false charges against the Plaintiff (as) a result of which criminal charges were laid against him. The said charges came up for hearing in the Resident Magistrates Court for the parish of Saint Andrew on the 6th day of January 1997 on which date, at the instance of the 1st Defendant the charges were withdrawn."

The Statement of Claim also indicated that on or about the 21st day of November 1996 the plaintiff was unlawfully and unjustly dismissed from his employment by the 1st defendant. The actual document here says that "he was lawfully and unjustly dismissed" but we assume that that was a typographical error. The defence that was filed was two fold in that there was a defence filed by Courts (Jamaica) Ltd and also one filed by the Attorney General for Jamaica. In its defence, Courts stated that "as a result of an incident occurring at its property on or about the 18th day of November 1996, a report was made to the Police who thereafter detained the Plaintiff." The defence also in paragraph 3 averred that "due to concerns of the witnesses the Defendant acquiesced with the Crown's decision not to pursue the matter further", a rather curious defence. Paragraph 4 averred that the plaintiff's contract of employment was lawfully

terminated and all entitlement due to him was paid and of course Courts denied any responsibility for any loss or damage suffered.

The Attorney General for Jamaica averred that Mr. Baugh "was arrested for the offences of simple larceny and conspiracy to defraud the (First Defendant Courts (Jamaica) Limited) together with one Livingston Robinson as a result of reports that were made to the Hunt's Bay Police Station and Statements collected from employees of the First defendant. Based on the statements given and investigations carried out, the Claimant was arrested, charged and taken into custody".

In the circumstances, said the Attorney General for Jamaica in his defence, the police officers attached to the Hunt's Bay Police Station had reasonable and probable cause to arrest and charge the claimant.

The learned Judge had before him evidence, through witness statements and cross-examination, and having assessed all that was put before him he concluded thus in paragraph 32 of his judgment:

"32. In my view by at least 6:00 p.m. on November 19, 1996, the police did not have any lawful basis to continue to hold Mr. Baugh in custody and so the false imprisonment began at that time. Mr. Baugh should have been released, admitted to bail or taken before the court the very next day. The failure to do this is a breach of the constitutional standard. The delay has not been explained. The tort of false imprisonment has been committed against Mr. Baugh. The only remaining question on this issue is the duration of the tort."

In relation to the malicious prosecution in paragraph 37 he said:

"37. Miss Holman said that on November 19, 2006, she received information from Miss Jacqueline Williamson informing her that Messieurs Baugh, Livingston Robinson and Paul Wilks were in the warehouse during lunch time moving a freezer with two stereos inside without her (Williamson's) authorization. Miss Williamson was a supervisor at the material time. Miss Holman said that she went to speak to the men. Wilks told her that Mr. Baugh and Mr. Livingston had asked him to move the freezer to the loading bay. According to her Mr. Baugh and Mr. Livingston did not say anything when she asked them for an explanation. She then spoke to Mrs. Ouida Ridgard and then called the police."

In paragraph 38 he said:

"38. In Miss Holman's view all this seemed suspicious because the men were not authorized to move the freezer. The freezers were usually stored in the same sealed condition in which they arrived and the packaging is never opened. When she saw the freezer in question it had no seal and inside were two stereos which were the property of Courts."

In the end he concluded that the arrest and also the malicious prosecution were proven. He indicated that in his view the false imprisonment ended on November 21 when Mr. Baugh was offered bail, and in assessing damages, the learned judge went through several of the authorities and found in paragraph 56, where he held that the "tort of false imprisonment is one which reflects the preeminence given to the liberty of the subject. An award of \$200,000.00 is appropriate in this case."

In paragraph 60 of his judgment he said, in respect of the malicious prosecution:

“60. The question is what is an appropriate level of compensation for an accusation of dishonesty? I have decided, in light of the absence of a sufficient number of cases presented, that the sum of \$350,000.00 is sufficient in this case.”

In challenging the judgment of the learned judge, the Attorney General filed several grounds of appeal numbering 7, the 7th being one dealing with the question of the interest awarded by the judge on general damages. Suffice it to say that in respect of grounds 1, 2 and 3, which relate to that area of the learned judge's judgment which delved into the constitution, we really see no useful purpose in addressing those grounds. The important grounds are those which dealt with the question of the finding of liability for false imprisonment, the finding of liability for malicious prosecution, that is grounds (d) and (e) and grounds (f) and (g) dealing with the question of the quantum of the damages and the question of the interest.

In respect of that area of the judgment which dealt with the question of constitutionality, the learned judge referred to several well-known cases. We make no comment on his reasoning in relation to these cases because these cases and the discourse surrounding them were totally in our view unnecessary for the purposes of this judgment, for the purposes of determining what was before him. This was a simple case of deciding whether Mr. Baugh had been

falsely imprisoned or not, whether he had been maliciously prosecuted or not. The learned judge did address those issues and the question of the constitution really was of no moment in the circumstances.

We think that, and we do find that, there was ample evidence to support the lack of justification for the imprisonment and also for the prosecution. We did not call on Miss Judith Clarke in respect of those findings, notwithstanding the spirited effort made by Miss Nicola Brown, who came obviously well prepared to deal with the question of the constitution but had no answer in respect of the findings so far as the facts of the case were concerned.

In the circumstances there is no basis for disturbing the findings of the learned judge on the question of liability. So far as the damages awarded are concerned, the principle that guides an appellate court in relation to the quantum of damages is whether the sum awarded is inordinately high or inordinately low. In this case, Miss Brown sought to suggest that the sums here awarded were inordinately high. We find absolutely no merit with the greatest of respect, in that submission. The sum of \$200,000.00 for false imprisonment even if it were for an hour or two cannot in our depleted currency be regarded as inordinately high. The same goes, so far as the \$350,000.00 for malicious prosecution is concerned.

We turn now to the question of the interest that was awarded by the learned judge where in the final sentence of his judgment he said:

"The total award is therefore \$550,000.00 which attracts interest at the rate of 6% from the date of the service of the writ to the date of judgment."

For such comfort as it may give Miss Brown, we are in agreement with her in respect of this relatively minor but important point. We are guided by the well known case of ***Central Soya of Jamaica Limited v Junior Freeman*** [1985] 22 JLR 152 wherein judgment was delivered on March 8, 1985. The powerful court comprised Mr. Justice Rowe as President, Mr. Justice Carberry and Mr. Justice Campbell (JJA). Arguing that appeal on behalf of the appellant were Mr. W. K. Chin-See Q.C., and Mr. Dennis Morrison who was not then elevated to the rank of silk but in recent times Mr. Morrison has become a Judge of this Court and we take our guidance from that case at page 167, paragraph (c) and (d) which read:

"Once the assessment has been made on the money of the day principle I do not think that the interest on the general damages for pain, suffering and loss of amenities should exceed one half the rate applicable to judgment debts. As the law now stands I would suggest as a guideline for the award of interest in personal injury cases that:

- (a) interest be awarded on special damages at the rate of 3% from the date of the accident to the date of judgment;
- (b) interest be awarded on general damages at the rate of 3% from the date of the service of the writ to the date of judgment."

At that time the Order that was in force was that the interest payable on every judgment debt was 6% per annum in the case of judgment debts denominated in Jamaican dollars. Since then, from information we have, there was an

increase in the interest, in that it was hiked to 12% and there has been a change since, in that as of June 22, 2006 The Judicature (Supreme Court) Rate Of Interest On Judgment Debts) Order, 2006 over the signature of the Minister of Justice, the Honourable A.J. Nicholson, Q.C., has been in force. It reads and I quote from paragraph 2:

"2. The rate of interest payable on every judgment debt shall be –

- (a) six per centum per annum, in the case of judgment debts denominated in Jamaican dollars; and
- (b) three per centum per annum, in the case of judgment debts denominated in foreign currency."

It follows that we have reverted to the position that obtained on March 8, 1985 when the ***Central Soya of Jamaica Ltd and Freeman*** case was decided and in keeping with that we will vary the award made to that extent in that where the learned judge had 6% we are changing it to 3%.

We heard submissions yesterday from Miss Clarke, indicating that there should have been an award which would reflect 3% at some stage and 6% at some other stage.

The fact of the matter is that the Order came into effect June 2006. The judgment was entered in October 2006. Were it intended that there should be any other position other than at the date of the judgment, the Order would have so stated. The end result is that the appeal is dismissed but there is a variation

of that interest award from 6% to 3% and the costs of the appeal are to be the respondent's.