

N/11/LS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1993/B.309

BETWEEN	MICHAEL BENNETT	PLAINTIFF
A N D	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

SUIT NO. C.L. 1993/W.237

BETWEEN	ADOLPHUS WILLIAMS	PLAINTIFF
A N D	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

Dennis Daly, Q.C., instructed by Daly, Thwaites and Campbell for the plaintiffs

Mrs. Llyle Sloley and Cordel Green, instructed by the Director of State Proceedings for the defendants.

Heard: January 22, 23 and 26, 1996

PANTON, J.

On the night of Sunday, May 9, 1993, there was a robbery at a bar at Point Hill, St. Catherine. That was not an unusual event to occur in a village in Jamaica in the nineteen nineties. Two men armed with guns, and another man armed with a knife were the culprits. Among the victims of this robbery were a butcher nicknamed "lawyer", and a seventy-five year old man named Richard Goffe.

The police were summoned and, along with some of the victims, they made an immediate search for the perpetrators of the crime. The search, which lasted for ninety minutes, was fruitless. Richard Goffe, who gave evidence at the trial of these actions for false imprisonment, said that one of the gunmen had a scar on the right side of his face while the other gunman had a red handkerchief masking his face.

At daybreak, the two plaintiffs who then lived at 24 Forth Street, Kingston 13, but who hail from Point Hill and had been visiting their relatives for the weekend, were at a bus stop at Point Hill awaiting transportation to take them back to the city. They apparently fitted the descriptions that the police had of the robbers. They were searched, but nothing incriminating was found on them. They were taken to the Point Hill police station and placed in custody.

The events that followed are in dispute in some respects. It seems factual though that they were taken that night to the Old Harbour police station then to the Central police station where an identification parade was held on May 22, 1993. The plaintiffs were not identified and so were immediately released.

The question for determination is whether the plaintiffs had been falsely imprisoned.

They have presented evidence that on the very morning shortly after they were apprehended the police were advised by Richard Goffe that the plaintiffs were not involved in the robbery. Notwithstanding this information, the police kept the plaintiffs in custody for twelve days before holding an identification parade.

The defence vehemently denies that the police were told that the plaintiffs were not involved in the robbery. They claim that the apprehension of the plaintiffs was at the instance of the victims who had chided the police for inaction. They claim further that the citizens had amassed at the police station threatening death to the plaintiffs if the police did not go to the bus stop and take them into custody. They further say that the identification parade was held as early as possible, considering that an earlier date had been scheduled but inclement weather caused its postponement.

Having assessed the witnesses, I am convinced that the witness Richard Goffe spoke the truth. I find that he was informed of the apprehension of two men; he went to the police station; he was afforded the opportunity to see them, and thereupon he indicated to the police that the men were not two of the robbers.

I reject the evidence of the Corporal that he had left the witness Goffe and others at the police station, then went to the bus stop, and returned with the men whereupon Goffe pointed at them and said that the plaintiffs were the robbers.

The police at Point Hill had a duty, upon being advised by Goffe of the error, to immediately release the plaintiffs. They had no duty, in the circumstances, of pursuing the goal of holding an identification parade. That was farcical. I find that whereas they may have had just cause for taking the men into custody initially, there was no longer any just cause after they had allowed Goffe to see the plaintiffs. The imprisonment that followed after the communication from Goffe was clearly unjustified.

DAMAGES

The plaintiffs have each asked for general damages of \$180,000.00 whereas the defence has suggested an amount between \$48,000.00 and \$60,000.00.

There is no doubt in my mind that to accede to the submission of the defence in this regard would be like adding insult to the injury that the plaintiffs have already suffered. Unlawful deprivation of one's liberty is a serious matter. Twelve days of deprivation of liberty cannot be compensated by \$60,000.00. I should think that the minimum award at this time cannot be less than \$180,000.00.

I have considered the cases that have been brought to my attention. Particularly of note are Peter Gayle v. The Attorney General (Suit No. C.L. 1987/G.009) decided by Theobalds, J. on October 11, 1993 and Sybil Erskine v. The Attorney General (Suit No. C.L.1987/E.076), a judgment of Malcolm J. delivered on November 4, 1994. In the former case, for three days' unlawful imprisonment, the plaintiff was awarded \$64,000.00. In the latter case, the plaintiff was awarded \$40,000.00 for a similar period of imprisonment. I am also taking into consideration two other cases of which the defendant is well aware. They are Brenda Edwards v. The Attorney General (C.L. 1989/E.076) heard on June 8 and 12, 1992, and Colin Henry v. The Attorney General (C.L. 1985/H.221), a judgment which was delivered on May 17, 1993. In Edwards an award of \$20,000.00 was made against police officers who went to the plaintiff's house, restricted her movement and assaulted her in the process. In Henry, for just over an hour's imprisonment, part of which was spent in a cage at the Linstead police station, and for malicious prosecution, the plaintiff was awarded \$150,000.00. I bear in mind that in the first instance an assault was also committed, while in the second matter there was the additional tort of malicious prosecution. In the instant case, the plaintiffs were incarcerated for twelve days. Their request for an award of \$180,000.00 can only be viewed as reasonable. It ought not to be denied.

INTEREST

The Supreme Court has for over a decade been awarding interest of three percent per annum on damages recovered by successful litigants in cases of this nature.

It is a notorious fact that Jamaica operates within the framework of very high interest rates and has been doing so for a notable period of time. Where then is the logic in maintaining this rate of interest? Indeed, where is the justice? It seems to me that the interests of justice and the welfare of successful litigants in cases of this nature would be better served if the rate of interest awarded be no less than ten percent per annum.

JUDGMENT is entered as follows:

MICHAEL BENNETT - judgment for the plaintiff. Damages assessed as follows:-

General: \$180,000.00 plus interest at 10% from the service of the writ.

Special: \$2,000 plus interest at 10% from May 22, 1993. Costs to the plaintiff are to be agreed or taxed.

ADOLPHUS WILLIAMS - judgment for the plaintiff. Damages assessed as follows:-

General: \$180,000.00 plus interest at 10% from the service of the writ.

Special: \$3,000.00 plus interest at 10% from May 22, 1993. Costs to the plaintiff are to be agreed or taxed.