IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CONSOLIDATED CLAIMS
SUIT NO. 1998/ B 330

BETWEEN	KEITH BENT	CLAIMANT
AN D	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

SUIT NO. 1998/ B 384

BETWEEN	FAITHLYN BENT	CLAIMANT
AN D	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

SUIT NO. 1998/ B 385

BETWEEN	SOPHIA BENT	CLAIMANT
AN D	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

Mrs. Marvalyn Taylor-Wright instructed by Taylor-Wright &Co. for the Claimants

Mrs. Julie Thompson and Miss Danielle Archer instructed by the Director of State Proceedings for the Defendant

False Imprisonment – Assault and Battery - Malicious Prosecution – Whether an adjournment *sine die* is a Determination of a Prosecution in favour of the Claimant

December 18 and 19, 2006

BROOKS, J.

On August 18, 1995, three members of one family came in violent confrontation with a party of security personnel. They were Keith Bent and

his sisters Faithlyn and Sophia. This was at Ellerslie Pen; an inner city community in the parish of Saint Catherine. At the end of the incident, all three had been arrested and charged for various offences. None was convicted. They all say that they were beaten and imprisoned by the police. Each has claimed damages for the alleged wrong done to them.

The Attorney General has opposed the claims, asserting firstly, that only reasonable force was used against Keith when he resisted the attempts of the police to prevent him breaching the peace. In the cases of Faithlyn and Sophia, the Attorney General has denied that either of them was struck.

One issue of law which has arisen during submissions by counsel, is whether the prosecution of the cases against the Bents, being adjourned *sine die,* was a determination in their favour. I shall first outline the facts, make a determination in respect of that legal issue and then turn to the question of the assessment of damages. For convenience I shall refer to the claimants by their respective first names. No disrespect is intended by the reference.

Findings of fact

The claim by the Bents is that Keith was set upon by the police when he accused them of improper behaviour. His sisters in turn said that while he was being beaten they sought to rescue him and were also beaten by the police, for their trouble. The Attorney General was hampered in his defence

because he could only produce a statement made by one of the police officers involved; a Constable Trevor Brown. The statement was written some three and a half years after the incident, and apparently for the purposes of defending these claims. The statement asserted that the police went to the location in answer to a complaint and there saw Keith behaving boisterously. Their attempts to speak to him were met with aggression by him. They attempted to take him into custody but were attacked by his sisters. A crowd gathered and the police had to leave with the three Bents.

With the limitation of a cold, fairly terse statement, it was, for the purposes of determining the facts on a balance of probabilities, difficult to resist the sworn testimony of the three Bents.

Mrs. Thompson, for the Attorney General, made a valiant attempt to identify discrepancies in the claimants' testimonies, but I accept that the majority were not material. They concerned matters such as whether the offending police officers were part of a joint patrol of soldiers and police, and as to the number of persons who travelled in a jeep to the police station with the Bents. These, I find, are explained by the fact that the incident occurred over eleven years ago. There was one discrepancy which I did find material. It is that there is a stark contrast between Keith's account and that of the police as to the genesis of the trouble between them. Keith says that it

started when he saw his cousin in the custody of the police. The police officer's statement speaks only to Keith's behaviour and impliedly rules out the initial presence of any other person. Interestingly, neither of Keith's sisters speaks of their cousin being present. In fact Sophia said that her cousin was not present. I am nonetheless prepared to find that their late arrival on the scene and their immediate involvement in the matter could explain the failure of the sisters to notice the cousin. The lapse of time could also explain this discrepancy. I therefore accept the account of the Bents as to the occurrences giving rise to the claims. I therefore find that the police officers acted maliciously and without reasonable and probable cause. I shall now assess each cause of action in the respective claims.

Assault and Battery

All three Bents testified that they were struck by the police at the location at Ellerslie Pen. Keith was beaten with a baton and kicked and punched. A gun was also pointed at his head. He says that his clothes were torn during the incident. Faithlyn, who was next on the scene, was "boxed" and "teargas was sprayed all over [her] eyes and mouth and all over [her] face". Sophia, eight months pregnant at the time, came in for beating all over her body. At the police station, both women say they were treated to another round of physical abuse by Constable Brown. Faithlyn testified that

her clothes were torn from her and she was reduced to a state of nakedness save for her panties.

False Imprisonment

The Bents were taken to the Spanish Town Police Station where they were all detained for a period of four hours. It is for the person detaining to justify the detention. (*Clerk and Lindsell on Torts* 17th Ed. Para 12 -33) This, the Attorney General, has failed to do. I therefore find, based on the facts as I have found them, that the imprisonment was unlawful.

Malicious Prosecution

The Bents were each charged with Assaulting Police, Resisting Arrest and using Indecent Language. Sophia was also charged with Obstructing Police. Keith stated that the charge of Resisting Arrest against him was dismissed. There is no specific evidence to the contrary. Apparently all the other charges against all three were adjourned *sine die.*

It is essential in a claim for Malicious Prosecution, for the claimant to prove that the prosecution was determined in his favour. Mrs. Taylor-Wright appearing for the Bents, submitted that an adjournment *sine die* was a determination in favour of the Bents. She relied on a judgment of Sykes J. in *B&D Trawling Ltd. v Cpl Raymond Lewis and others*, (C.L. B 015 / 2001) (delivered January 6, 2006) (unreported). There, Sykes J. stated:

> "It is convenient to deal at this point with the issue of whether an adjournment sine die is a sufficient determination in favour of the claimant to ground a claim for malicious prosecution. Mrs. Foster-Pusey submitted that it is not. I do not agree with her. All the reasons she articulated could apply to a nolle prosequi yet no one has suggested that a nolle prosequi is insufficient to ground the tort of malicious prosecution. A nolle prosequi does not finally determine the guilt or innocence of the accused. Indeed, he can be prosecuted even after the entry of a nolle prosequi. If that is so, why isn't an adjournment sine die sufficient? The defendant can still be prosecuted. I therefore conclude that the adjournment sine die...is a sufficient determination in favour of B&D to enable them to initiate action for malicious prosecution."

As I hope to demonstrate below however, it appears that there is no definitive answer to the question. There is a division of opinion on the point. In *Clerk and Lindsell on Torts (supra)*, the learned authors at paragraph 15-19, state that although the prosecution must have been brought to a "legal end", that end need not be a final and conclusive one. They also make the following assertion:

> "So, it is enough if the proceedings has been abandoned without being brought to a formal end, though this cannot often happen in a criminal prosecution."

I believe that a distinction can easily be drawn between a *nolle prosequi* and the situation where a case is adjourned without a date (*sine die*). It seems to me that, without more, an adjournment *sine die* cannot be said to be a "determination" of the matter. The element of finality is absent. The true status of such an adjournment, at least initially, is that the case is in abeyance pending the request of the prosecutor. In contrast, a *nolle prosequi* immediately brings an end to the case, even though it may be re-instated. In

this jurisdiction the typical *nolle prosequi* (which may only be issued by the Director of Public Prosecutions), uses the following format:

> "In exercise of the powers conferred upon me by virtue of the provisions of section 94 of the Constitution, Section 4 of the Criminal Justice (Administration) Act, and every other power thereunto enabling, I hereby inform you that the Crown does not intend to continue the proceedings against the accused...on the abovementioned charge."

In the 2004 edition of *Archbold Criminal Pleading, Evidence and Practice* at paragraph 1-251, the learned authors state that, "[a] *nolle prosequi* puts an end to the prosecution...but does not operate as a bar or discharge or an acquittal on the merits".

In *Goddard v Smith* (1704) 6 Mod. Rep. 261, 87 E.R.1008, there is a contrast to that statement quoted from *Archbold.* In *Goddard*, the court found that a plaintiff who claimed a declaration that he had been maliciously indicted for *barretry* without probable cause, had failed, when it was shown that he had been discharged by means of a *nolle prosequi* entered by the Attorney General. Holt, CJ, is reported to have equated the *nolle prosequi* with the case being adjourned *sine die.* His reasons are reported at p. 261:

> "...that the entering (sic) a *nolle prosequi* was only putting the defendant *sine die,* and so far from discharging him from the offence, that it did not discharge any further prosecution upon that very indictment, but that, notwithstanding, new process might be made out upon it; and sure it is hard to allow a man who gets off by a *nolle prosequi* to maintain an action for a malicious prosecution."

It appears from the judgment that that case was decided in the early stages of the development of the modern use of the *nolle prosequi.* I have

seen two more recent Jamaican cases on the point. In *R. v Resident Magistrate, ex parte Ervin Walker* (1981) 18 J.L.R. 6 Parnell, J. sitting as part of a Full Court, said, at p. 9:

> "[Mr. Gayle] did, however intimate that he would welcome an authoritative pronouncement that a "no order" has the same effect as a withdrawal. And I think it does. A "no order" or a nolle prosequi would have the same legal effect for the purpose of instituting civil proceedings at the instance of a person charged."

The other case is a decision of Reckord, J. in *Facey v Constable Hall and The Attorney General* (1994) 31 J.L.R. 518. In that case the criminal charges had been adjourned *sine die,* and despite the passage of eight years after the event, there had been no trial. The headnote in *Facey* at p. 519 B, concluded that, "the prosecution against the plaintiff was deemed discontinued due to the abandonment of same by the police".

Having looked at those authorities, I am of the view that a prosecution which has been adjourned *sine die,* and which has not been restored to the court's list within a reasonable time, may be deemed abandoned by the prosecutor and as such, the prosecution deemed discontinued. There would therefore have been a determination in favour of the person charged.

In the instant case, Constable Brown, when he gave his statement in March of 1999, said:

> "At the station they were charged and properly placed before the courts. Keith Bent's matter was adjourned Sine Die. **No information could be obtained from the Courts Office of the other matters**." (Emphasis supplied)

I think that it is fair to say from the section quoted, that the prosecution then had no interest in or intention of, restoring the cases against the Bents. Indeed, after over eleven years, that has not occurred. It is true that the two main police officers are no longer available to the Crown. Constable Brown has since died and his colleague Constable O'Connor has resigned from the police force. There were however, at least five other members of that patrol upon whom the Crown could have called, to continue the proceedings if it was so inclined. Based on this failure, I accept that the element of a final determination has been proved. The prosecution must be deemed abandoned and therefore discontinued by the prosecutors.

I now turn to the question of damages.

General Damages

Mrs. Thompson cited the following cases in support of her submissions concerning the quantum of damages to be awarded:

a. *Paula Yee v Leroy Grant and Anor. Harrison's Assessment of Damages for Personal Injuries* (*Harrison's*) p. 24.

b. *Reginald Stephens v James Bonfield and anor.* 4 *Khan* 212.

c. *Tamah South v George Ergos* 4 *Khan* 215.

d. *Devon Hamilton v The Attorney General* (delivered 3rd February 2006) (unreported).

e. *Cornel McKenzie v The Attorney General* (Suit No. C.L. M 088/2002) (delivered 26th June 2003) (unreported).

f. *Everton Foster v The Attorney General* (Suit No C.L. F. 135/1997) (delivered 18th July 2003) (unreported).

Some of the cases cited by Mrs. Taylor-Wright were:

a. *Raymond Shaw v Michael Gordon* p. 6 of *Harrison's.*

b. *Junior Panton v The Attorney General* p. 60 of *Harrison's.*

c. *Colin Henry v The Attorney General and ors.* (1993) 30 J.L.R. 227.

d. *Inasu Ellis v The Attorney General and anor.* SCCA 37/01 (delivered 12th December 2004) (unreported).

Assault and Battery

Keith:

Keith suffered relatively mild injuries. Despite his testimony of a severe beating, Dr. Paul Robinson who attended to all three Bents on the date of the incident found only tender swelling to his left forehead and right jaw, and two small lacerations (1 cm. each) to the left side of Keith's face.

I wish to mention two other cases. The first is the case of *Vincent Dixon v Inspector Alrick Reid* and anor. 4 *Khan* 208. In that case Mr. Dixon was awarded $100,000.00 for pain and suffering and loss of amenities for an assault by the police. The attack left him bruised about the head and

with generalized tenderness. That award, which was made in October 1995, is now worth about $300,000.00, using the October 2006 Consumer Price Index (CPI). It seemed to have been a more severe beating than that inflicted on Keith, and therefore I shall discount that award.

There is also the recent case of *Allan Currie v The Attorney General* C.L. 1989/ C-315 (unreported) (delivered August 10, 2006). Mr. Currie was beaten by police officers. They used their guns and a piece of 2" x 4" wood to hit him all over the body. Guns were pointed at his head and neck. A gun was pushed into his mouth, breaking two of his teeth. Rattray, J. awarded Mr. Currie $550,000.00 for the assault. That figure would still be relevant for these purposes, except that Mr. Currie's injuries were far more severe than Keith's. In the circumstances I find that an appropriate award for the assault on, and battery of, Keith would be $200,000.

Faithlyn:

Like Keith, Faithlyn suffered relatively mild injuries. Dr. Paul Robinson found only tender swelling to the periorbital regions of the head and tender swelling with haematoma to the lateral aspect of her left arm. She of course had the added feature of having her clothing torn from her, much to her embarrassment. Using the same analysis as set out above for Keith I would award her $200,000.00 for the assault and battery.

Sophia:

Sophia also had minor injuries as found by Dr. Robinson. His examination revealed tenderness over the right dorsal region, the centre of the lower back and tender swelling with discolouration to the forehead. These are consistent with Sophia's description of her ordeal. Her pregnancy at the time should also be considered. She too should also receive an award of $200,000.00 under this head.

False Imprisonment

Keith:

For the false imprisonment, Mrs. Thompson submitted, using the authorities of *Hamilton* and *McKenzie* cited above, that the sum of $5,000.00 per hour is appropriate. Mrs. Taylor-Wright, citing the *Colin Henry* case (*supra*) claimed $819,071.82. I find that the *Henry* case is distinguishable. This is because Mr. Henry's status as a radio broadcaster and an attorney-at-law were considered in granting the award. So was the fact that the arrest received much publicity and evidence was led concerning the mental and physical effect that the detention and prosecution had had on him.

In the *Inasu Ellis* case cited above, the Court of Appeal awarded the sum of $100,000.00 for a detention for seven hours, during which Mr. Ellis was interrogated. Mr. Ellis' status as a Government Forester, a Justice of the

Peace and a member of the Portland Chamber of Commerce was considered. That award was made in December 2004. In adjusting for inflation and for the shorter period of incarceration I am of the view that an award of $60,000.00 is appropriate in these circumstances.

Faithlyn and Sophia:

Both sisters underwent the same ordeal in respect of the false imprisonment as did Keith. I find that the award for each of them should be similar to his, that is, $60,000.00,

Malicious Prosecution

Mrs. Taylor-Wright relied on the *Inasu Ellis* case for this issue. Mr. Ellis had been dismissed of several charges laid against him under the Larceny Act. The matters apparently had some connection with his employment. The Court of Appeal awarded $2,000,000.00 for malicious prosecution and aggravated damages. I do not find the case helpful in this regard. Mr. Ellis' status figured far too prominently in their Lordships' assessment for the case to be of assistance here. Keith works with his brother as a handy-man. The circumstances concerning the indignity, humiliation and embarrassment are worlds apart. I would use as a guide, the case of *Kerron Campbell v Kenroy Watson and The Attorney General of Jamaica* (C.L. C 385/ 1998) (unreported) (delivered January, 6, 2005). In

that case Mr. Campbell was maliciously prosecuted for possession of ganja. He was apparently a man of modest means. He rode a bicycle, and in 1997 was earning $4,000.00 per week. Sykes, J. (Ag.) (as he was then) awarded him $$90,000.00 under this head. I would make an identical award for Keith.

Faithlyn and Sophia:

Having assessed the authorities in the area in respect of Keith, and bearing in mind the similarities with Keith, I think it would not be inconvenient to treat Faithlyn and Sophia together, so far as is possible. I find that the award for each of them should be similar to his, that is, $90,000.00 for the malicious prosecution.

Exemplary Damages

Keith and his sisters have each claimed exemplary damages in their pleading. The case of *The Attorney General v Delroy Parchment* SCCA 7 /2003 (unreported) (delivered July 30, 2004) recently provided guidance for making awards under this head. The element of punishment and deterrence in appropriate cases was stressed by their Lordships. I hope that we never get to the stage where the unlawful pointing of a firearm at a man's head, by the police, is not regarded as outrageous, arrogant and cynical conduct. I think that the treatment meted out to Keith deserves an award of exemplary

damages. I would follow the lead of their Lordships in the Parchment case and award Keith $100,000.00 under this head.

Whereas I am confident that no award for exemplary damages should be made for Faithlyn, despite her embarrassment, I am less sanguine about Sophia's circumstances. Her pregnancy should have been taken into account by the police officers. I would find in favour of an award for her under this head. The sum of $100,000.00 would also be appropriate.

Special Damages

Mrs. Thompson complained about the lack of documentary proof for the special damages claimed. She cited *Bonham v Hyde Park Hotel Ltd.* [1948] 64 TLR 177 and that line of cases, in support. I am inclined nonetheless, to allow the special damages as pleaded for the medical treatment rendered to the Bents and for their lost clothing. They testified that they got receipts from the doctor, but they were unable to produce them, either because they were lost or given to their attorneys, who failed to have them exhibited. The sums claimed are not unreasonable. Larger amounts were quoted in evidence but the Bents are restricted to the amounts pleaded. The case of *Walters v Mitchell* (1992) 29 J.L.R. 173 authorizes some lenience in appropriate circumstances. The amounts pleaded are as follows:

Keith:

Cost of Medical Consultation	$ 500.00
Cost of Obtaining Medical Report	300.00
Replacement cost of shirt	2,500.00
Replacement of trousers	3,500.00
	$6,800.00

Faithlyn:

Cost of Medical Consultation	$ 500.00
Cost of Obtaining Medical Report	300.00
Replacement cost of blouse	1,500.00
	$2,300.00

There was no pleading in respect of Sophia's special damages.

Conclusion

The Attorney General, having only produced a statement from one of the police officers present on the scene, was at a clear disadvantage in this case. No explanation was given concerning the failure to produce, as witnesses, any of the several other police officers who were present at the time. The Bents have easily satisfied the court, on a balance of probabilities, as to the truth of their case.

On the particular aspect of the element of disposal of the prosecution in their favour, I have concluded that the lapse of time since the matter was adjourned *sine die*, without the Crown having revived it, demonstrates that the prosecution has been abandoned. That therefore satisfies the requirement of proof of a determination in favour of the Bents. All other

elements of the tort of Malicious Prosecution, and the other torts were proved by them, and they are entitled to damages.

It is therefore ordered that Judgment be entered for the Claimants with damages assessed as follows:

Keith Bent:

Special Damages		$ 6,800.00
General Damages		
Assault and Battery	$200,000.00	
False Imprisonment	60,000.00	
Malicious Prosecution	90,000.00	
Exemplary Damages	100,000.00	
Total		$450,000.00

Faithlyn Bent:

Special Damages		$ 2,300.00
General Damages		
Assault and Battery	$200,000.00	
False Imprisonment	60,000.00	
Malicious Prosecution	90,000.00	
Total		$350,000.00

Sophia Bent:

General Damages		
Assault and Battery	$200,000.00	
False Imprisonment	60,000.00	
Malicious Prosecution	90,000.00	
Exemplary Damages	100,000.00	
Total		$450,000.00

Interest is awarded on the respective awards for Special Damages at 3% per annum from 18/8/95 to 30/6/99, at 6% per annum from 30/6/99 to 22/6/06 and at 3% per annum from 22/6/06 to 19/12/06.

Interest is awarded on the respective awards for General Damages at 3% per annum from 17/12/98 to 30/6/99, at 6% per annum from 30/6/99 to 22/6/06 and at 3% per annum from 22/6/06 to 19/12/06.

Costs to the Claimants in the sum of $128,000.00 in total.

I have included in that figure the sum of $40,000.00 which is an addition to the figures at item 5 of the table of basic Costs in the Civil Procedure Rules. This is to account for the additional work done prior to the case management process and the order of consolidation.

It would be remiss of me to close without thanking counsel on both sides for their diligence in providing authorities and submissions which assisted me in my deliberations.