

7/1/02

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B169/2000

BETWEEN	ALTON WASHINGTON BROWN	PLAINTIFF
AND	THE ATTORNEY GENERAL	1 ST DEFENDANT
AND	REVENUE PROTECTION DIVISION	2 ND DEFENDANT
AND	DETECTIVE INSPECTOR WINSTON LAWRENCE	3 RD DEFENDANT

Mr. T. Ballantyne instructed by Ballantyne Beswick and Co.
for the Plaintiff.

Mr. John Francis instructed by Director of State Proceedings
for the first Defendant.

Heard: 30th January, 2002

Cole-Smith, Master (Ag.)

On the 21st July 2000 the plaintiff issued a Writ of Summons to
recover damages for Unlawful Detention and Unlawful and Malicious
Prosecution.

On the 30th January 2002 the plaintiff sought an Order on
Summons for Directions with regards to paragraphs 25, 26 and 27.
There was consent with regards to paragraphs 25 and 27 but there was

none in respect of paragraph 26 which sought an Order for trial by jury.

Mr. Ballantyne in arguing that the Order be granted said it would not be inconvenient for any jury to listen to the evidence and be unable to make a determination in the matter. Trial by jury is faster and once a jury is empanelled the matter would be continued to conclusion whereas if there is a trial by a judge alone after the first week in most cases the matter is adjourned to a date when the judge returns to the Court. The plaintiff was exercising his right for trial by jury.

Mr. Francis argued that the Statement of Claim is for loss of profits in excess of forty million dollars. To prove special damages the proof is strict and an amount of this magnitude requires production of documentary evidence which may prove difficult and complex for the jury to understand. A judge alone would not require seven (7) days. The most would be three (3) days. Trial by jury leads to more judicial time and more legal costs incurred. This is a complex matter as opposed to the many other hundreds of Malicious Prosecutions. On the plaintiff's own pleadings the prosecution was initiated by a

specialized area in the Constabulary Force - The Revenue Protection Division.

There is no right to trial by jury as Mr. Ballantyne submits. It is in the discretion of the court at the stage of the Summons for Directions to direct as to the mode of trial. One very important factor to take into consideration is that in a trial by judge alone the determination of damages creates a precedent which will be of guidance to both sides as to what damages the courts are likely to award. This precedent not only serves a useful purpose but is of great value to legal advisors in the settlement of cases.

I see no great distinction in this case from most cases for Malicious Prosecution where the mode of trial has been by judge alone.

Taking all factors into consideration including the greater cost and duration of jury trial I have come to the conclusion that this is an appropriate case by judge alone.

Leave to appeal granted.