

JAMAICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 16 OF 1978

BEFORE: The Hon. Mr. Justice Kerr, J.A. (Presiding)
The Hon. Mr. Justice Carey, J.A. (Ag.)
The Hon. Mr. Justice Marsh, J.A. (Ag.)

BETWEEN STANFORD DAVIS Plaintiff/Appellant
AND District Constable Renford
AND Colour Sergeant Williams
AND Private E. Murray
AND Private L. Lowe
AND Private C. Pinnock
AND The Attorney General of Jamaica

Mr. B. Macaulay, Q.C. instructed by Messrs. Daley, Walker & Lee-Hing
for the Plaintiff/Appellant

Mr. L. Langrin and Mr. N. Fraser instructed by the Director of State
Proceedings for Respondents.

23rd October, 1980

KERR, J.A.

This is an appeal by the plaintiff/appellant from the judgment
of Vanderpump, J. in which he entered judgment with attendant costs in
favour of the respondents.

The plaintiff's claim was against the first five defendants as
servants or agents of the crown, and (save for the 1st defendant who was
not served with the writ) were all members of the Jamaica Defence Force.
The Attorney General was sued in his representative capacity.

In his statement of claim, in its operative parts, the plaintiff
alleged:-

- (1) "That on or about February 21, 1976,
at about 1.30 p.m., while he was lawfully
transacting his business with one Lloyd
Fullerton at 21 Byer Road, Kingston,
defendants maliciously, without reasonable or

probable cause, arrested, detained and took him in custody to the Olympic Gardens police station in the most humiliating and degrading circumstances, and that he was eventually released about 5 p.m. the same day."

- (2) The first five defendants, "about the same time and place, after having wrongfully arrested and detained the plaintiff, wrongfully and intentionally, maliciously and without reasonable or probable cause violently assaulted and beat him, and in arresting him pointed guns and drawn bayonets, jabbing him with fixed and pointed bayonets in the stomach, stamping and crushing his feet, bundling him in a jeep, after forcing him to sit on the floor of the jeep; that all were threatening to shoot him."

The defence, after making the usual denials, positively allege that "save that on the 21st February, 1976 about 1.30 p.m. a report was made to the police; that District Constable Long with the abovenamed five military defendants were to investigate the report, defendants will contend that on arrival at the scene the plaintiff was beating one Mr. Roy Fullerton when the second defendant had to use reasonable force to separate the plaintiff from the said Mr. Fullerton, thereafter both plaintiff and Mr. Fullerton were taken to the Olympic Gardens police station, where the matter was further investigated. They were subsequently released."

The appellant gave evidence and called as his witnesses Daphne Duprez and Sandra Sheppard and tendered a certificate from a Dr. Simpson of the U.S.A. as to ~~injuries~~ injuries he received. In his evidence his reason for going to 21 Byer Road was to persuade the reluctant Roy Fullerton, who had sold him some land, to sign certain documents. He denied that he was at the time beating Mr. Fullerton when the defendants arrive, and maintained that despite his saying that it was a civil matter he was not advised or informed of the reason for his arrest.

The defendants, Corporal Miles, Private Lowe, Private Charles Pinnock, Roy Fullerton and Dr. Barbara Hutchinson gave evidence for the defence.

Fullerton gave evidence of the beating he received at the hands of the appellant in the presence of the police, and Dr. Barbara Hutchinson to the effect that on examination Fullerton had suffered considerable bodily harm.

Miles and the witnesses for the defence painted a picture of a man in an ungovernable rage; that in their very presence he was assaulting Fullerton, had to be restrained, and that even after they restrained him he attempted to get at Fullerton. Miles in very clear evidence gave three main reasons for taking him into custody. First, that there was a crowd hostile towards the plaintiff, openly stating that but for the arrival of the police they would have lynched him; secondly, that they planned to set the appellant's car on fire; and thirdly, he would have continued beating Fullerton openly in defiance of their presence. Miles maintained that he did not assault plaintiff in the manner alleged; no one hit him with any rifle butts, that his men used no more force than was reasonably necessary in the circumstances to arrest him and take him to the police station; and that plaintiff had to sit on the floor of the jeep because there was not sufficient seating accommodation in the vehicle.

The learned trial judge, after a very long review of the evidence, in considering the plaintiff's case, had this to say:-

"On this type of evidence, and having regard to the discrepancies, I could not argue that either Lowe or Miles assaulted the plaintiff as he said, nor did the rest of the soldiers surround him with fixed bayonets. This I do not accept. The case therefore fails."

He also considered the claim for false imprisonment and had this to say,

"It would appear that if this evidence -
that is the evidence for the defence -

is accepted there was a breach of the peace that day." -
Later he cautioned- "I accept the evidence of Fullerton that he was beaten by the plaintiff, borne out by Dr. Hutchinson who examined him the very day. On a balance of probability I accept the evidence of Colour ~~Sergeant~~ MILES. I find there was a breach of the peace occasioned by the behaviour of the plaintiff who assaulted Fullerton in MILES' presence thereby entitling him to apprehend the plaintiff and hand him over to the police. I find that in doing so he used no more force than was reasonably necessary in the circumstances. I also find that the plaintiff was informed on more than one occasion that he was being taken thereto have the matter sorted out along with Fullerton. I find that ~~Sergeant~~ MILES was acting without malice. I also find no absence of reasonable and probable cause. Indeed there was reasonable and probable cause in the circumstances."

Before us, quite properly in my view, of the original grounds filed only ground 2 was argued by Mr. Macaulay, namely that the learned trial judge erred in law in holding that what the District Constable is alleged to have told the plaintiff amounted to a justifiable reason for arresting him; and he argued that ground together with the following additional ground for which he sought and was granted leave:-

"that the failure to inform the appellant of the reason for his arrest and/or detention is contrary to section 15 (2) of the Constitution. The appellant was therefore entitled to redress under section 25 of the Constitution; The learned judge did not only fail in this aspect of the matter, but impliedly found the justification for arrest and/or detention as sufficiently satisfying of section 15 of the Constitution."

In support of this Mr. Macaulay, while conceding that on the evidence it was open to the learned trial judge to find there was a breach of the peace and that in the circumstances there was justification for appellant's arrest, nevertheless contended that his detention was unlawful, as the appellant was not informed of the true reason for arrest as required by section 15 (2) of the Constitution. Therefore, he was entitled not to mere

nominal damages, but to compensation. Further, notwithstanding that the writ was not issued in accordance with the Judicature (Constitutional) Redress (No. 2) Rules 1963 made pursuant to section 25 (4) of the Constitution, the court had jurisdiction under section 25 (3) of the Constitution to determine this question. He then relied on the case of Madzimbamuto v. Lardner-Burke and Frederick Phillip George, [1969] A.C., page 645, with particular reference to pp. 712 to 720.

Alternatively, if the matter is treated as a common law action, the appellant was given a false reason for his arrest, and his detention was unlawful. For that, he relied on the case of Christie v. Leachinsky, 1947, 1 All E.R. at page 567. He maintained that in the circumstances exemplary damages should be awarded to the appellant.

Mr. Langrin contended that section 26 (8) of the Constitution made it quite clear that the Constitution did not abrogate the common law position; that in the circumstances the appellant must have known the reason for his arrest, and that his arrest was justified and in that regard the propositions enunciated in Christie v. Leachinsky are still extant and applicable to the instant case. He submitted that there was a breach of the peace and it was not necessary in the circumstances to specifically inform him in any precise language of the offence. He argued that in any event adequate means of redress existed in the common law to the appellant and referred to section 25 of the Constitution.

Now section 15 (2) of the Constitution reads:-

"Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language which he understands, of the reasons for his arrest or detention."

Section 15 (4) - "Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that person."

In my approach to this matter I am constrained to heed the course advocated in the Privy Council case of the Director of Public Prosecutions v. Nasralla, 1967 (2) All E.R., page 161, at page 165. Lord Devlin in giving the advice of the Board had this to say:-

"Their lordships can now leave procedural points and consider the terms of s.20(8) of the Constitution. All the judges below have treated it as a declaring or intended to declare the common law on the subject. Their lordships agree. It is unnecessary to recort to implication for this intendment, since the Constitution itself expressly ensures it. Whereas the general rule, as is to be expected in a Constitution and as is here embodied in s.2, is that the provisions of the Constitution should prevail over other law, an exception is made in Chapter III. This chapter, as their lordships have already noted, proceeds on the presumption that the fundamental rights which it covers are already secured to the people of Jamaica by existing law. The laws in force are not to be subjected to scrutiny in order to see whether or not they conform to the precise terms of the protective provisions. The object of these provisions is to ensure that no future enactment shall in any matter which the chapter covers derogate from the rights which at the coming into force of the Constitution the individual enjoyed. Accordingly, s. 26 (8) in Chapter III provides as follows:-

'Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this chapter; and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions.'

I am of the view that section 15 (2) is not in any way in conflict with the propositions set forth as a statement of the law in the case of Christie v. Leachinsky (supra). In the instant case it was clear from the pleadings as well as from the nature and conduct of the case on both sides that the trial proceeded as a common law action, and that the form of pleading in relation to the District Constable complied with the Constabulary

Force Law section 35, in alleging, as they are enjoined to in any action brought against a Constable in the execution of his duty, that it "shall be an action on a case as for a tort, and in the declaration shall be expressly alleged that the Constable had acted maliciously, without reasonable probable cause."

On the evidence and as accepted by the learned trial judge the appellant assaulted Fullerton occasioning him actual bodily harm, and **continued** to assault him in the presence of the District Constable and the Officers of the Jamaica Defence Force, and it was necessary to restrain him to prevent further attacks on Fullerton. The learned trial judge found that in doing so they used no more ^{force} than was necessary. In the circumstances depicted by the evidence the appellant must have known the reason for his arrest . The learned judge also found, and I quote, "that the plaintiff was informed on more than one occasion that he was being taken there to have the matter sorted out along with Fullerton." This finding cannot be taken in isolation. In order to prevent further attacks by the appellant on Fullerton it was necessary to settle ~~the~~ basic contention between them. The fact that this was one of the reasons for his being taken to the station was incidental to the whole affair. The fact that the police and the Officers of the Defence Force acted as peacemakers cannot be a ground for denying them a clear justification for the arrest of the plaintiff.

The action having proceeded in the manner as it did, and having regard to the pleadings I am of the view that section 25 (3) of the Constitution cannot ~~at~~ this stage be prayed in aid. Section 25 (2) of the Constitution reads:-

"The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance

of subsection (1) of this section and may make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the said section 14 to 24 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law."

In my view, not only were there adequate means of redress available at Common Law but they were fully utilised, and it is from those means of redress that this appeal comes. Therefore, notwithstanding the jurisdiction conferred by subsection (3) that:-

"any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal,"

the appellant cannot seek in this oblique manner the means of redress contemplated by section 25. In that regard I am mindful of the following observation of Lord Diplock in the Privy Council case of *Harrikissoon v.*

The Attorney General of Trinidad and Tobago, 1979, 3 W.L.R. 62 at p. 64, and I consider it the proper approach to applications of this nature:-

"The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter I of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action."

What the appellant did was to pursue the normal procedures of an action in tort, and from the judgment in that action he now appeals. In these

circumstances it is not proper for him to come to this court at this stage to seek of the court the remedies under section 25 of the Constitution.

In any event I hold that in the circumstances there was sufficient information to enable the appellant to appreciate and to know the reasons for his arrest, and that this applied not only to the pertinent proposition in *Christie v. Leachinsky*, but in my view would meet the requirements of section 15 (2) of the Constitution, which is in harmony with *Christie v. Leachinsky*.

For these reasons the appeal is dismissed with cost to the respondents - to be taxed if not agreed.

CAREY, J.A. - I entirely agree.

MARSH, J.A. - So do I. I have nothing to add.