

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1989/E-076

BETWEEN BRENDA EDWARDS PLAINTIFF

A N D THE ATTORNEY GENERAL DEFENDANT

Mr. Andre Earle for plaintiff.

Mr. Stanley Clarke for defendant.

HEARD: JUNE 8 AND 12, 1992

PANTON, J.

This is an action for assault and battery, trespass, and false imprisonment.

The plaintiff is a farmer living at Montrose, St. Mary. She and her children were at their home sleeping at about 4:00 a.m. on November 22, 1988. Her story follows. Four armed policemen visited her. Two of them, Corporal Delroy Young and a Corporal Blair entered the house; the others remained outside. The plaintiff had opened the door to her house after someone had shouted "police". The plaintiff enquired of the legality of their entry. Blair's response was that he had a warrant which was in his back pocket.

No warrant was produced. The officers thoroughly searched the house. The plaintiff's inquiry as to the reason for the search received no response. Her children were questioned by the officers. She protested the questioning of the children. Blair advised her, by the use of graphic Jamaican expletives, to keep quiet and threatened to do her physical harm. When the plaintiff told Blair that he could not harm her, Blair proceeded to demonstrate the folly of such a statement. He held the plaintiff's right arm, twisted her around, and dragged her outside for about a chain; she fell in her garden. The medical evidence indicates that she suffered slight swelling of the right forearm. The plaintiff felt "coward" and "nervous". She was intimidated by the sight of the guns and the behaviour of Blair who had threatened to "lock (her) down". Young told Blair to "low the woman no man". It was then that Blair released her.

No charges were ever laid against the plaintiff. No offending article was found at her residence. Her daughter gave supporting evidence.

The defence called Delroy Young as a witness. He is now a Sergeant. He said that there was a lawful search of the premises as he personally had procured a warrant which he read to the plaintiff, notwithstanding the plaintiff's boisterous manner. According to him, the plaintiff spoke "on top of her voice" and was "moving around in her house making a lot of noise".

During the search, the plaintiff continued to behave in a boisterous manner, grabbing things from the witness Young. According to him, it was necessary for Blair to hold her to prevent her from interrupting the search. Blair spoke to her in a stern, strong manner. Even the plaintiff's children called to her and asked her to behave herself, and allow the police to do their work. The search was for agricultural forks, files, machetes among other things that had been reported as stolen from a nearby farm. Nothing was found.

Both sides agreed that the plaintiff's adult son who lives nearby was brought by the police to the plaintiff's house at the time of the search. His house had also been searched but nothing was found. Nevertheless, he was escorted to the police station.

Findings

An assessment of the credibility of the witnesses is vital for the proper determination of the issues.

I was most impressed by the evidence of the plaintiff and her daughter. They were clearly witnesses of truth. Regrettably, I can come to only one conclusion so far as the evidence of Sergeant Young is concerned - that is, it is not to be believed. I have not come to that view lightly. I shall focus attention briefly on the so-called warrant as therein lies the falsity of the defence. The warrant on the face of it is supposed to have been signed on November 20, 1989 by Mr. L.W. Dawkins, J.P. for St. Mary. It shows that it was endorsed on November 22, 1989 by Corporal Young (as he was then) as having been executed on that date. So, the warrant that has been produced as the authority for the search was signed by the Justice of the Peace one year after the search.

I find, without any difficulty whatsoever, that there was no warrant in existence at the time of the search.

I accept in its totality the evidence of the plaintiff and her witness. I find that the plaintiff farmed her own land; that she was not employed on a

neighbouring farm as claimed by Young. It is perhaps significant that there was no disclosure as to the name of the farm or its proprietor.

In my judgment, there was no basis for the police to even imagine that goods stolen from any farm would have been at the plaintiff's house. There was no basis and no warrant for entering the plaintiff's house. I find that having entered without authority, Blair proceeded to assault and restrict the movement of the plaintiff.

Damages

The particulars of special damages have been proven. Interest is awarded thereon at 5% from November 22, 1988 to June 12, 1992.

The plaintiff is seeking aggravated and exemplary damages. It should not be forgotten that aggravated damages are compensatory in nature and may be considered where the plaintiff's feelings of dignity and pride have been wounded. Exemplary damages are punitive in nature. Where they may be awarded, the Court should consider whether the sum that it proposes to award as compensation is adequate. It is only if it is inadequate, in the circumstances of the case, that the Court should consider awarding additional exemplary damages. In any event, the power to make an award of this nature is "a weapon that should be used with restraint".

I am satisfied that the amount that is being awarded to the plaintiff is sufficient to compensate her for the torts that have been committed. I am coupling the assault and battery with the false imprisonment as the circumstances are almost the same.

Assault and battery)	
False imprisonment) \$ 20,000.00
Trespass	<u>\$20,000.00</u>
TOTAL	<u>\$40,000.00</u>

Interest is awarded on this sum at a rate of 5% per annum from the date of the service of the writ to June 12, 1992.

The plaintiff's costs are to be agreed or taxed.

Final comment on the warrant

It appears to me that Sergeant Young has made a deliberate attempt to

deceive the Court. It is a deeply disturbing situation. I am disappointed that the Attorney General should have mounted such a palpably false defence. He should have concentrated his energies on investigating the serious irregularity involving the warrant.