

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO. 37/01**

**BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.  
THE HON. MR. JUSTICE HARRISON, J.A.  
THE HON. MR. JUSTICE SMITH, J.A.**

<b>BETWEEN</b>	<b>INASU EVERALD ELLIS</b>	<b>PLAINTIFF/APPELLANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL</b>	<b>1<sup>ST</sup> DEFENDANT/ RESPONDENT</b>
<b>AND</b>	<b>RANSFORD A. FRASER</b>	<b>2<sup>ND</sup>/DEFENDANT/ RESPONDENT</b>

**Leon Green** instructed by **Leon Green & Company** for the appellant  
**Curtis Cochrane, Assistant Attorney General (Ag)** instructed by Director  
of State Proceedings for the respondents

**June 10, 11 12, 2002 and December 20, 2004**

**SMITH, JA:**

On the 12<sup>th</sup> June, 2002 at the end of the hearing of the appeal we gave an oral judgment in this appeal and said we would put our reasons in writing at a later date. We regret the delay in so doing.

**Background Facts**

On or about March 1, 1991, Mr. Inasu Elliis, the plaintiff/appellant, ("appellant") was at work when the 2<sup>nd</sup> respondent, Constable Ransford Fraser took him into custody at the Port Antonio Police Station. He was

detained and interrogated for seven hours. On the same day he was charged with several offences against the Larceny Act and thereafter released on bail.

At the time of his arrest, the appellant was employed to the Government of Jamaica as Forester 2 (PST/GN2) and assigned to the Forestry Department of the Ministry of Agriculture. His office was in Port Antonio, Portland.

Arising from these charges the appellant was interdicted and faced disciplinary proceedings in July, 1995. On October 4, 1995 the charges against the appellant were dismissed in the Resident Magistrate's Court. On July 10, 1996 the appellant filed a Writ of Summons against the respondents whereby he claimed damages for false imprisonment and malicious prosecution.

The particulars of special damages were amended to delete certain items which had been claimed. The following items remained:

(1) (a) Cost of legal representation before the Resident Magistrates' Court	\$1,323,525.00
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(b) Cost of legal representation in disciplinary proceedings	\$15,075.00
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(2) Transportation costs

Travelling to and from Port Antonio Resident Magistrates' Court	\$27,000.00
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Travelling to and from Kingston for disciplinary proceedings (10 weeks)	\$45,000.00
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(3) Medical Expenses:	
(a) Consultation with doctors	\$72,500.00
(b) Medication 1991-1999 and continuing	\$270,000.00
(4) Loss of Income (Construction Contract)	\$550,000.00

Appearance was entered by the 1<sup>st</sup> respondent but no defence was filed. Thus liability was not in issue.

The matter went before Harris J for assessment of damages. On March 21, 2001 the learned trial judge in her judgment made the following awards.

**Special Damages**

Legal Fees	\$515,075.00
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**General Damages**

False imprisonment	\$ 60,000.00
Malicious Prosecution	\$ 150,000.00
Aggravated damages	\$ 200,000.00
With interest at 6% per annum	

This was an appeal against the quantum of the awards made by the learned trial judge and her refusal of the other claims.

The grounds of appeal, as amended were:

1. That the learned trial judge failed to justly evaluate the evidence and draw the proper inferences therefrom in making her award for General Damages.
2. The learned trial judge wrongly found that the amount claimed by the appellant for legal expenses was exorbitant; and erred in law in holding that by virtue of Chapter 3, Order 7 of the Staff Orders for

the Public Service, "the plaintiff's" special damage claim for loss of profits in his private business "cannot be entertained."

3. The learned trial judge wrongly found an award of \$210,000 for General Damages adequate to properly compensate the Appellant for false imprisonment, injury to the reputation of the appellant; injury to the appellant and pecuniary loss due to loss of business.
4. That the Learned Trial Judge wrongly found that the award of \$300,000 for punitive damages was adequate in the circumstances of this case.

### **Ground 2- Special Damages**

#### **Legal Expenses**

The appellant exhibited an invoice from his attorney-at-law for the sum of \$1,323,525 for legal expenses. This sum was made up as follows:

- (i) \$1,256,250 – for professional services in respect of the criminal charges
- (ii) \$15,075 – for services rendered in respect of disciplinary inquiry
- (iii) \$52,200 – for transportation

The invoice was rendered on the basis of time and charge. The billable hours in respect of (i) and (ii) were 250 and 5 respectively at US\$150 per hour. The exchange rate was fixed at J\$33.50 = US\$1.00

The learned judge held that the amount of \$1,256,250 for professional fees seemed exorbitant. In her opinion the fees were

inflated by being rendered in United States currency and reconverted to Jamaican currency. Taking into account the number of attendances at court she concluded that the sum of \$500,000 would be reasonable. She allowed the claim for \$15,075 in respect of the disciplinary proceedings. Counsel for the appellant submitted that the learned judge failed to address her mind to the reasonableness or otherwise of the hourly rate charged and the number of hours for which the bill was rendered. Counsel further submitted that the learned judge erred in not taking into account the fact that the respondent did not challenge the reasonableness of the hourly rate or the number of hours quoted in the invoice.

The submissions of counsel for the appellant are not without merit. The attorney-at-law who tendered the invoice is a senior practitioner. The hourly charge of US\$150 or J\$5,025 (the rate was fixed at the time to an exchange rate of J\$33.50 to US\$1) was in our view reasonable.

The invoice indicates how the 250 hours billed were arrived at and there was no challenge to the evidence. There were 4 court fixtures for mention, 25 court fixtures for trial and continuation of trial. The hours billed included time spent in conferences with client, witnesses, co-defendants and their attorneys-at-law, perusal of documents and legal research etc. These factors are relevant in determining the reasonableness of the number of hours for which the bill was rendered.

The learned judge did not demonstrate that she gave sufficient consideration to these facts. We could find no basis for the award of \$500,000 which the learned trial judge made. However, we were of the view that the sum claimed (viz. \$1,256,250.00) should be discounted to reflect the probability that the appellant's attorney-at-law would not have been in court for the entire day on each day that the matter was set for mention or trial. We found that an award of \$1 Million would be appropriate in respect of (i) above .

The claim at (ii) was allowed by the learned judge. The claim at (iii) for transportation was not allowed and was not pursued on appeal.

#### **Medical Expenses**

The learned judge held that the appellant's claim in respect of consultation with doctors and medication had not been proved and must be disallowed. This ruling was not challenged on appeal.

#### **Loss of Profit on construction contract**

The appellant's evidence at trial was to the effect that the sum of \$550,000 represented the balance of money due to him pursuant to a contract for the construction of a building on the site of the Happy Grove School. He was unable to complete the construction due to his arrest. Mrs. Jacqueline Mendez, then Deputy Chief Personnel Officer, testified on behalf of the 1<sup>st</sup> respondent. She told the trial judge that public officers engaging in private work must obtain the consent of the Public

Service Commission by virtue of Order 3.7 of the Staff Orders. She said that the appellant was not granted permission by the Service Commission to operate any form of business. The learned judge held that in the absence of evidence that permission was granted to appellant to undertake private work his claim for loss of income could not be entertained.

Order 3.7 of the Staff Orders for the Public Service provides:

- "3.7-- (a) Public Officers are forbidden-
- (i) to undertake any private work for payment or engage in trade or employ themselves in any commercial or agricultural undertaking without the consent of the appropriate Service Commission.
  - (ii) ...
- (b) Nothing in the Order shall be construed so as to prohibit public officer from making arrangements for undertaking work for payment for statutory or corporate bodies established or operated by Government for public purposes."

Mr. Leon Green for the appellant submitted that there is nothing intrinsically unlawful in the engagement in private work for payment by a civil servant. He referred to the evidence of Mrs. Mendez that the sanction for a breach of Order 3.7 "could include a loss of job, or a reprimand" and submitted that the Government as an employer could not penalize the appellant by depriving him of the proceeds of his private work. He further submitted that in the light of the unchallenged evidence that the Parish Council, the Public Works Department and the Urban

Development Corporation ("U.D.C") were the appellant's main clients the 1<sup>st</sup> respondent should be estopped from raising the absence of permission as a defence or ought to be taken to have waived the requirement for formal approval. It does not appear that the learned judge's attention was drawn to the second part of Order 3.7.

We were of the view that Order 3.7(b) was of importance and relevance. The appellant's unchallenged evidence is that the contract involved the construction of a building on the grounds of the Happy Grove School. The appellant named three clients. It could be inferred from his evidence that this contract was with the U.D.C. The Court took judicial notice that the U.D.C was a statutory body. Accordingly, we concluded that by virtue of Order 3.7 (b) the prohibition in 3.7(a) was not applicable to this case. The appellant was therefore entitled to recover the loss of income under the contract which resulted from his arrest and prosecution.

The appellant's evidence is that the contract was for \$2.4Million or \$2.6Million. His profit margin on a project such as the one in issue was 15-17%. He was paid \$150,000 for work already done. He was therefore entitled to recover 15% of \$2.4Million less \$150,000 (that is \$360,000 - \$150,000 = \$210,000).



### **Grounds 1 and 3 - General Damages**

The appellant's claim was for damages for false imprisonment and malicious prosecution. The appellant led evidence to the effect that as a result of his imprisonment and prosecution, he suffered injury to his reputation, health and vitality and also pecuniary loss. He also claimed aggravated damages.

### **False Imprisonment**

The learned judge found that the appellant was deprived of his liberty for seven hours. The period of imprisonment resulted not only in a loss of liberty but also a loss of dignity and caused mental suffering. The judge also accepted his evidence that he felt humiliated, embarrassed and disgraced. She found that he was forced to withstand the callous behaviour of the 2<sup>nd</sup> respondent who left him to stand in a room at the police station for several hours open to the public's view and ridicule. The learned judge concluded that the above treatment of the appellant coupled with the fact that he went without food or drink during the entire period of time he was at the station must have aggravated his mental pain. The learned judge was of the view that of the many cases cited only the case of **Gordon v Attorney General** C.L. 1992/G063 delivered on February 14, 1997 offered useful guidance. Gordon a security officer, was falsely imprisoned on May 2, 1991 and released May 3, 1991 without any

charges being laid against him. An award of \$60,000 for false imprisonment was made.

In the instant case the learned judge said:

"In the case under review the plaintiff had been detained for seven (7) hours. Charges were laid against him; they were dismissed. Although his period of imprisonment was shorter than that of the plaintiff in **Gordon's** case, I am of the view that his imprisonment also merits an award of \$60,000.00."

Counsel for the appellant submitted that the learned judge, having accepted that, unlike Mr. Gordon, the appellant suffered severe mental and physical anguish, should have made a significantly higher award in the instant case than that made in the **Gordon** (supra) case. Further counsel contended that in making the award based on the **Gordon's** (supra) case the learned judge failed to take into consideration the effect of inflation. Counsel informed the Court that the award of \$60,000 in the **Gordon** (supra) case (when converted by using the relevant Consumer Price index) would be equivalent to an award of \$110,354 in March of 2001. Mr. Cochrane, counsel for the respondent, did not attempt to refute the submissions of the appellant. We accepted the submissions of the appellant's counsel as correct. We were of the view that in all the circumstances an award of \$100,000 would be appropriate.

**Malicious Prosecutions and Aggravated Damages**

The learned judge made awards of \$150,000 for malicious prosecution and \$300,000 for aggravated damages.

**Facts**

The appellant attended court on thirty two occasions. He was a Justice of the Peace and for ten years prior to his arrest he performed the duties of a Lay Magistrate. He was a well-respected, prominent and popular member of his community. After his arrest, the invitations he once received to important functions ceased. He was a member of the Portland Chamber of Commerce. He used to entertain "lavishly". Since the incident he had not entertained because he had become depressed and withdrawn. He testified that his friends shun him and that his social life was destroyed. His mental condition has rendered him unable to continue sexual relationship with his wife. His wife gave supportive evidence. Dr. Ruth Doobar, a clinical psychologist testified that prior to his arrest the appellant was gregarious cheerful and friendly. After his arrest she observed a great change in his demeanour, his emotional and mental status. She said he had lost his self esteem and was suffering from psychoneurosis which was expressed in depression. In her view he had been psychologically destroyed.

The learned judge found that the appellant had not only suffered damage to his reputation but also to his health and vitality. The learned

judge also found that he had suffered indignity, humiliation and embarrassment by the fact that the charges were preferred against him.

She examined the cases cited and concluded that the case of **Colin Henry v Attorney General and Another** [1993]30 JLR 227 "offered appropriate guidance in the making of an award". Colin Henry an attorney-at-law was at the material time the Executive Director of the Public Sector Organisation of Jamaica. The fact that he was arrested and charged was broadcast on radio and published in the newspaper. His reputation was severely damaged and he had to resign. Medical evidence established that the incident caused him physical and mental pain. In May, 1993 he was awarded \$150,000.00 for damages in respect of his arrest and malicious prosecution.

In making the award in the instant case Harris J said:

"In the present case the plaintiff was at the time of his arrest a civil servant and Justice of the Peace. He was detained for seven (7) hours by the police. A broadcast of his arrest was carried on radio. In my view a similar award of \$150,000 would be adequate compensation for his having been maliciously prosecuted."

Counsel for the appellant submitted that the learned trial judge erred in relying on the **Henry** (supra) case. He contended that in the **Henry** (supra) case the injury to the plaintiff's reputation was not long lasting. Whereas in the instant case the injury to the appellant's reputation was for all practical purposes irreparable. He submitted that

the learned trial judge should have placed some reliance on the case of the **Gleaner Co. Ltd. and Dudley Stokes v Eric Abrahams** SCCA No. 70/96 delivered July 31, 2000. Mr. Cochrane for the respondent submitted that the award made by the learned judge was adequate.

It is our view that the learned judge erred in holding that an award of \$150,000 was adequate compensation. Caution must be exercised when comparing figures of award in other cases. The facts of one case must, in main essentials, bear comparison with the facts of another before any comparison between the awards can fairly be made – see **Singh v Toony Fong Omnibus Co. Ltd.** [1964] 3 All ER 925 at 927.

In **Henry's** (supra) case Panton JA, found that the damage to reputation was not long lasting. **Henry** recovered ground socially, he became a talk show host, continued to practise as an attorney-at-law and was elected President of the Jamaica German Society. Whereas in the instant case the appellant was, according to Dr. Doobar, psychologically destroyed. This was said of him in 1999 some eight years after the incident.

The learned judge also erred in not making allowance for inflation. The award in **Henry's** case was made in May 1993. Thus even if the facts of that case bore a reasonable measure of similarity to the present case, a sum which in March, 2001 would be the equivalent of \$150,000 in 1993 should be awarded.

The learned judge also made an award of \$300,000 for aggravated damages. The learned judge found that the 2<sup>nd</sup> respondent's conduct was "disdainful, grossly insulting and offensive" to the appellant. The appellant was denied his right to communicate with his director. He was left standing in a room for 5 ½ hours. He was not offered refreshment or an opportunity to obtain food or drink. The charges were pending for almost five years. The judge was of the view that the behaviour of the arresting officer, the failure of the prosecution to dispose of the matter within a reasonable time and the fact that the arrest had been publicised, warranted the appellant being awarded aggravated damages. The learned judge made an award of \$300,000 under this heading. We were of the view that an award of \$2.1 million would adequately compensate the appellant for malicious prosecution including aggravated damages.

### **Conclusion**

For the above reasons we allowed the appeal, set aside the awards made below and substituted therefor the following:

#### **1. Special Damages**

- (i) Legal fees for services in the Resident Magistrates Court- \$1,000,000
- (ii) Costs for representation at enquiry - 15,075
- (iii) Loss of income on construction contract - 210,000

with interest on the total sum of \$1,225,075

at 6% from 1st March, 1991 to date of judgment.

2. **General Damages**

False imprisonment - \$100,000

Malicious prosecution including  
Aggravated damages 2,000,000

with interest on the total sum of \$2,100,000 at 6% from date of  
service of writ to date of judgment

3. Costs to the appellant to be taxed if not agreed.

**DOWNER, JA:**

I agree.

**HARRISON, JA:**

I agree.