



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. C.L. 1990/F-046

BETWEEN	HERWIN FEARON	CLAIMANT
A N D	THE ATTORNEY GENERAL FOR JAMAICA	1ST DEFENDANT
A N D	CONSTABLE BROWN	2ND DEFENDANT

**Miss Sherry Ann McGregor and Miss Ayana Thomas
instructed by Nunes & DeLeon for Claimant.**

**Miss Carlene Larmond instructed by the
Director of State Proceedings for Defendants.**

Heard: March 3rd, 4th & 31st, 2005.

CORAM: HARRIS J.

The Claimant's claim against the Defendants is for recovery of damages for false Imprisonment and Malicious Prosecution.

On July 3, 1989, the Claimant was taken into custody by the 2nd defendant and subsequently arrested and charged with receiving stolen goods. He was admitted to bail on July 7, 1989. On July 10, 1989, he appeared before the Resident Magistrate's Court for Clarendon in May Pen, when he was released upon a "no order" being made.

THE CLAIMANT'S CASE

The Claimant is a minibus operator. He stated that on the day he was apprehended by the Second Defendant he accosted him in a public and busy area in the town of May Pen, pushed him to the Police station some 150 metres away, humiliated him, detained him for a period of 5 days at the May Pen lock-up and subsequently charged him with receiving stolen property. These acts, he asserted, were done maliciously or without reasonable or probable cause.

THE DEFENDANT'S CASE

It is the Defendants' evidence that the theft of motor vehicle parts was reported to the Second Defendant by a Mr. Isaac Clarke. On June 25, 1989, the Claimant attended the May Pen Police Station accompanied by Mr. Clarke and in the presence of Mr. Clarke, the Claimant admitted to the Second Defendant that he had bought some of the stolen items and was willing to make restitution. The Claimant was directed by the 2nd defendant to bring the items to the May Pen Police Station but he failed to do so. On July 3, 1989 the Second Defendant went in search of him and detained him on suspicion of receiving stolen goods. He was charged on July 6, 1989. Bail was offered to him on that same day. This bail he took up on July 7, 1989.

The issues for determination by this Court are: -

- (i) Whether the Second Defendant acted with malice or without reasonable or probable cause to arrest and detain the Claimant,
- (ii) Whether he had reasonable and probable cause to prosecute the Claimant.
- (iii) Whether the Claimant suffered loss consequent on his arrest, detention and prosecution.
- (iv) If he had sustained loss, the quantum of damages to which he is entitled.

I will first give consideration to the claim for malicious prosecution. In order to establish malicious prosecution guidance is afforded by the case of *Wilks v Voisin 1963 6 WIR 50* at page 57 in which the elements of the tort were outlined by Wooding, *C.J.* in the following terms:-

“Accordingly in an action for the vindication of the right to be protected against unwarranted prosecution, which is the action for malicious prosecution, a plaintiff must show (a) that the law was set in motion against him on a criminal charge (b) that he was acquitted of the charge or it was otherwise determined in his favour; (c) the prosecutor set the law in motion without reasonable and probable cause; and (d) that in so setting the law in motion the prosecutor was actuated by malice.”

There is no dispute that the Claimant was prosecuted by the defendants, he having been arrested and charged by the 2nd defendant. It has also not been

disputed that the prosecution was determined in the Claimant's favour. He must, however, establish that the prosecution was born out of malice and was initiated without reasonable and probable cause.

Malice in this context incorporates "not only spite and ill will but may also include motives other than a desire to bring a criminal to justice." The Claimant must therefore show that the 2nd defendant acted with hate, animosity, rancour, or malevolence in prosecuting him. It must be demonstrated that the 2nd defendant did not have an honest belief in the guilt of the Claimant.

Is there evidence that the 2nd defendant acted out of ill will, spite or any other motive in prosecuting the Claimant? The 2nd defendant stated that prior to the arrest of the Claimant, he attended the police station with a Mr. Isaac Clarke. Mr. Clarke reported to him that his auto parts storeroom was broken into and motor vehicle parts were missing. One Dave Gabriel admitted that he was responsible for the theft of the items and that he had sold some to the Claimant. The Claimant admitted that he had bought some of the items and promised to return them to the police. This he failed to do.

It is clear that the 2nd defendant had received ample information, both from Mr. Clarke as well as from the Claimant by his admission, for him to have maintained an honest belief that in the sincerity of, not only what was told to him by his informant but also that which was admitted by the Claimant. He had

not known the Claimant before. In my opinion, he would not have had any reason to have acted out of spite or ill will to have laid the charge against the Claimant. He had been armed with sufficient ammunition to have arrested and charged him for the offence of receiving stolen goods.

In my view the 2nd defendant had honestly believed that the information given to him about the Claimant purchasing stolen property was anchored on his full conviction founded on reasonable grounds that the Claimant was probably guilty of receiving stolen goods and this led him to assume that it was true. No malice can be attributed to the 2nd defendant. The claim for malicious prosecution therefore fails.

I will now turn to the claim for false imprisonment. A claim for false imprisonment is maintainable where a person is detained without lawful justification. In *Flemming v Myers and The Attorney General (1989) 26 J.L.R., 525 at 530 Carey, JA* stated:

“In my respectful view, an action for false imprisonment lie where a person is held in custody for an unreasonable period after his arrest and without either being taken before a justice of the peace or a Resident Magistrate.”

Although an arrest may originally be justifiable, it may become wrongful if the imprisonment is unreasonable. Section 23 of the Constabulary Force Act

imposes an obligation on a police officer who, on the arrest of a person to take him before a Justice of the Peace or a Resident Magistrate within a reasonable time.

In *Flemming v Myers and the Attorney General* (supra) Morgan, J.A. said:

“The purpose of bringing the accused before the Resident Magistrate or a Justice of the Peace within a reasonable time is similar to this provision [section 286 Judicature (Resident Magistrate’s Court) Act] that is to have an examination for the purpose of a further remand or to offer bail so as to prevent or alleviate unnecessary detention.”

A Resident Magistrate and a Justice of the Peace are not the only persons empowered to offer bail to a person taken into the custody by the police. Sections 23 and 24 of the Constabulary Force Act also permits a senior police officer to offer bail to an arrested person, if he deems it prudent.

The arrest and charge of the Claimant was lawful. There is no dispute that he had been detained by the defendant. His actual detention is justifiable.

However, even if an initial detention is justifiable, the period of detention ought not to be unduly long. If the detention is found to be longer than justified then this could amount to unreasonable delay and consequently result in false imprisonment, as, it would be demonstrative of absence of reasonable and probable cause. The question, which arises, is whether the length of the

claimant's detention was reasonable. The Act does not specify what amounts to reasonable time.

However, in *Flemming v Myers and The Attorney General* (supra) Morgan JA, stated:

“It is clear that in determining the reasonableness of time that elapses, the circumstance of each case must be the guiding principle; and that any unreasonable delay in taking an imprisoned person before the court will result in liability for false imprisonment”

The Claimant was taken into custody on July 3, 1989 and released on July 7, 1989. On one hand, the claimant declared that he was arrested, charged and admitted to bail on July 7, 1989. On the other hand, the defendants asserted that he was arrested, charged and admitted to bail on July 6, 1989. An evidential burden is cast on the defendants to show that the period of detention was reasonable.

The second defendant detained the Claimant about 6:30 in the evening of Monday July 3, 1989. He said he carried out investigations over the next two days and arrested and charged the Claimant on Thursday, July 6, 1989. Here he is saying that the delay in arresting and charging him was to allow further investigations to be conducted.

He had a complaint from Mr. Clarke. He stated that he had received an

admission from the Claimant, twice in one day. First, when he arrived at the police station, in the presence of the complainant Mr. Clarke and later that same day while they were alone at the back of the police station. The 2nd defendant had sufficient information to have caused him to have honestly believed that the Claimant had committed the offence. In my judgment, the defendant, on July 3, 1989 the 2nd defendant had been entrusted with ample information to decide whether prosecution of the claimant should be pursued. There would have been no necessity for him to have conducted any further investigations after the Claimant had been detained.

I accept the Claimant's evidence that he was arrested, charged and admitted to bail on July 7, 1989. The 2nd defendant was obliged to have arrested and charged the Claimant on July 3, 1989. The Claimant ought to have been taken before a Justice of the Peace or a Resident Magistrate the following day for the question of his bail to be determined, or, he could have been granted bail by a senior police officer at the police station. In my opinion, there was unreasonable delay in releasing him. The charge was not for a very serious offence. Steps ought to have been taken by the 2nd defendant to secure the Claimant's release on bail by the morning of July 4, 1989. He had been unnecessarily detained from the afternoon of July 4, to the morning of July 7, 1989 and is therefore entitled to damages.

The manner in which the claimant had been taken to the police station and the conditions under which he had been kept at the police station would have caused him humiliation. He is a minibus operator in the May Pen area. He is well known in the area and this would have resulted in damage to his reputation.

He was pushed to the police station. On the first day of his detention, the claimant was kept in a grilled area of the police station. On the following days, he was placed in a very small cell with eight other persons some of whom were charged with murder. This cell was filthy and reeked with odor of urine. He had no opportunity to lie down. He had to sit on the concrete floor during his sojourn there. Clearly he would have been very uncomfortable. This would have affected him emotionally and would have caused him mental anguish and humiliation.

The Claimant is therefore entitled to damages. Guidance as to an adequate amount to be awarded for general damages is provided by the following cases cited by Miss McGregor:

CL 1994/C364 Cassie v Williams and The Attorney General

CL 1993/W237 & B309 Williams & Bennett v The Attorney General.

In *Cassie v Williams & The Attorney General*, the plaintiff was incarcerated for 24 hours. An award of \$50,000.00 was made on February 10, 2000. This sum would today translate into \$87,000.00 using the current C.P.I of 2032.8.

In *Williams & Bennett v The Attorney General* on January 26, 1996, each plaintiff was awarded \$180,000.00 for general damages with respect to 5 days incarceration. Currently, this would amount to \$410,000.00

The claimant in the present case had been wrongfully detained for three and a half days. In my judgment, an award of \$280,000.00 would be adequate compensation for general damages for him.

The circumstances of this case does not support an award of exemplary damages Nothing has been shown that there was “ a conscious wrong doing or contumelious disregard” of the claimant’s rights by the 2nd defendant. Exemplary damages must always be anchored on something more substantial than simply a jury’s displeasure of a defendant’s conduct. See *Uren v John Fairfax & Co Ltd 117 CLR pg. 118.*

I now turn to the claim for special damages. The claimant claimed \$6,000.00 daily for loss of earnings, \$2,000.00 for legal fees and \$300.00 for transportation expenses. Special damages must not only be specially pleaded but also specifically proved. He stated that he earned a net income

of \$1000.00 daily from operation of his minibus. Although there ought to have been strict proof of his income, having regard to the circumstances and the nature of his occupation, he would not have been engaged in keeping books of accounts. It would not be unusual for a minibus operator not to be involved in documenting his daily transactions. Taking into account his evidence, I accept that he earned a net income of \$1000.00 daily. He will therefore be awarded \$1000.00 daily for four days, which amounts to \$4000.00.

He stated he paid \$2000.00 to an attorney at law who came to the police station to arrange for his bail. He would have obtained a receipt. None was tendered in support of this payment. This item is disallowed. He also said he paid \$300.00 for transportation to Kingston to see the attorney-at law. This sum also will not be allowed.

Judgment for the Claimant in the sum of \$284,000.00 being general damages of \$280,000.00 with interest thereon at the rate of 3 % per annum from the date of the service of the Writ of Summons to July 14, 1998 and 6% per annum from July 15, 1999 and special damages of \$4,000.00 with interest thereon at the rate of 3% per annum from July 4, 1989 to July 14, 1999 and 6% from July 15, 1998 to date of Judgment. Costs to the Claimant to be agreed or taxed.