

N/A 65

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. C.L. F036 of 2001

BETWEEN	LOCKSLEY FRANCIS	CLAIMANT
AND	THE ATTORNEY GENERAL	1ST DEFENDANT
AND	IAN YOUNG	2 ND DEFENDANT
AND	JOSEPH DAVIS	3 RD DEFENDANT

Mr. Lawrence Haynes for the Claimant

Miss Katherine Francis and Miss A. Richards instructed by Director of State Proceedings for the Defendants.

HEARD: 5th February, 29th, 30th March and 9th November, 2004

G. SMITH, J.

1. The Claimant, Mr. Locksley Francis' case is that on the 1st March 1999, while attending his coal kiln at Lyssons Beach, St. Thomas Mr. Ian Young the 2nd Defendant and Mr. Joseph Davis o/c " Dog Face" the 3rd Defendant came to the beach. Both these men were known before to the Claimant as Police officers.

2. He contended that Joseph Davis grabbed him by his throat and said ...
“Hey deportee boy, whey me goat deh? Mi a wicked man, you know mi?” The Claimant denied knowing anything about his goat.
3. Both the 2nd and 3rd Defendants then took turns at poking him in his eyes, handcuffed him and gave him a severe beating all over his body.
4. During the beating one “Passo” came along and enquired what it was that the Claimant had done. He was informed by Mr. Davis that Mr. Francis had stolen his black ram goat.
5. “Passo” then informed the Defendants that he had seen and tied up a goat fitting that description. He directed them to where this goat was to be found.
6. The Claimant was taken to where the goat was tied by the 2nd and 3rd Defendants. On arrival there he was instructed to admit that he had tied the goat at that location. He refused and asserted that both Defendants would have to pay for what they had done to him.
7. Mr. Davis told him to shut up and hit him. He was further assaulted by the 2nd and 3rd Defendants. Mr. Davis then tied the rope with the

goat to the Claimant's waist and the goat dragged him from that point past the Lyssons school to Mr. Davis' home.

8. At that location Mr. Young took a big stick and hit the Claimant across his back which caused him to fall to the ground.
9. Sometime later, the handcuffs were removed and the Claimant ran off to the Morant Bay Police station and made a report.
10. He subsequently attended the Princess Margaret Hospital where he received medical attention.
11. A Medical Report was tendered by the Claimant in support of his case. The Report indicated that the doctor saw and treated the Claimant on the 1st March 1999. The significant findings were contusion and swelling to face, shoulder girdle and a small abrasion to the back.
12. The 2nd and 3rd Defendants on the other hand disputed a number of things that the Claimant contended.

13. They stated that there was an incident involving the Claimant and themselves but this incident occurred on the 4th January 1999 the date originally pleaded by the Claimant and not the 1st March 1999 as he said in his evidence.
14. Mr. Davis further stated that on the 4th January 1999 he missed his ram goat and sought the assistance of Mr. Young a fellow officer, to find his goat. As a result of information they received they went to the Lyssons Beach.
15. On arrival there they saw and questioned Mr. Francis about the missing goat. He denied any knowledge of the goat.
16. During this period one "Passo" came along and informed Mr. Young that he had seen a black ram goat tied behind some bushes.
17. After further questioning of the Claimant by Mr. Young, he took both Mr. Young and Mr. Davis to where the goat was tied. The goat was retrieved by Mr. Davis.

18. A discussion ensued between Mr. Young and Mr. Davis and a decision was taken not to prosecute Mr. Francis as the goat had been recovered.
19. The Claimant was released. Mr. Young stated that he took the precaution to handcuff Mr. Francis prior to taking him to the place where the goat was located, as he feared that he might have tried to escape.
20. Both the 2nd and 3rd Defendants denied assaulting or beating or falsely imprisoning the Claimant that day or at any other time.
21. Mr. Davis gave evidence that on the 1st March 1999 he was on 6 days short leave and was in fact in Kingston on that date.
22. Mr. Young stated that he was on sick leave on the 1st March 1999 and was at home at Leith Hall.
23. What is of great significance in this case is the issue of the credibility of the witnesses. On the question of the date of the incident, the Claimant was most unhelpful. It was initially pleaded that the

incident occurred on the 4th January 1999. At the start of the case an amendment was granted after the witness in amplifying his evidence stated that the incident occurred on the 1st March 1999. The Medical Report seemed to have supported that date.

24. However, when tested in cross-examination, the Claimant was very evasive. He could not remember what day of the week the incident happened, nor the date or even the month. He sought to resolve the issue by stating that whatever date the doctor stated in the Medical Report was the date of the incident as he was examined by the doctor the very same day.

25. That date the 1st March was disputed by the Defendants who contended that the incident occurred on the 4th January 1999, the date which was originally pleaded. Both Defendants gave evidence of where they were on the 1st March 1999. In the case of Mr. Young his evidence that he was at home on sick leave was unchallenged by the Claimant.

26. On the issue of the injuries, the medical evidence is significant and instructive. The Claimant gave evidence of being grabbed in his throat by Mr. Davis. There is no mention of any injuries to his throat.
27. The Claimant further indicated that both Mr. Davis and Mr. Young took turns at poking him in his eyes. Bearing in mind how delicate the eyes are, it is remarkable that the Claimant did not complain to the doctor of any pains or discomfort to his eyes. Significantly, the doctor saw no signs of injury to his eyes.
28. Mr. Francis described how the goat with the rope was tied to his waist and that the goat dragged him from where the goat was recovered to Mr. Davis' house. It is incredible in my view that the Claimant having been dragged by what he described as this large ram goat, there was no evidence of any injuries e.g. abrasions or chafing to his waist by the rope.

29. ISSUES

- (a) Was the Claimant assaulted by the 2nd and 3rd Defendants on the date and in the manner as alleged by him?

- (b) Was his detention unjustified, that is, was malicious and without reasonable and probable cause?
- (c) The credibility of the witnesses.

30. CONCLUSIONS

From the evidence presented I find on a balance of probabilities that there was an incident between the Claimant and the 2nd and 3rd Defendants. The Claimant has however failed to satisfy the Court that this incident took place on the 1st March 1999 as opposed to the 4th January 1999.

- 31. There was a conflict between the date pleaded by the Claimant (with which the Defendants agreed) and the amended date which the Claimant gave evidence about, which was not satisfactorily explained by him.
- 32. This conflict arose against the background of the very evasive answers given by the Claimant as to the date of the incident, the date on his Medical Report as to when he was examined by the doctor and the unchallenged evidence of Mr. Ian young, the 2nd Defendant that he was on sick leave at home on the 1st March 1999.

33. The Medical Report tendered in evidence by the Claimant does not in my view support the evidence given by him of the injuries he received. Surely if such injuries were sustained by him I am sure they would have been mentioned in the Report.
34. On the issue of whether or not the Claimant's detention was unjustified, (that is malicious or without reasonable and probable cause,) in my opinion when the Claimant was detained, the 2nd and 3rd Defendants has sufficient grounds for reasonably suspecting that the Claimant had stolen the 3rd Defendant's goat.
35. On the basis of that finding I concluded that the Claimant has failed to establish that he was restrained by the 2nd and 3rd Defendants without legal justification.
36. The credibility of the witnesses in this case was a very crucial issue. The Claimant on the one hand was extremely evasive in his answers in cross-examination, volunteered a lot of irrelevant information and was less than candid to this Court. The 2nd and 3rd Defendants on the other hand struck me as being truthful witnesses, in particular Mr. Ian

Young. His unchallenged evidence that he was at home at Leith Hall on the 1st March 1999 is just one example of how he came across to the Court as an honest witness.

37. Finally, I concluded on a balance of probabilities that the Claimant has failed to established his case as pleaded.
38. I therefore award Judgment to the Defendants with Costs to be agreed or taxed.