IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2010 HCV1556

BETWEEN	*NICOLE-ANN FULLERTON*	*CLAIMANT*
A N D	*THE ATTORNEY GENERAL*	*DEFENDANT*

Appearances

Mrs. J. Samuels-Brown Q.C. and Mrs. Tameka Jordan for the claimant.

Miss Tova Hamilton instructed by Director of State Proceedings for the defendant.

Assessment of Damages – False imprisonment – Malicious Prosecution – Constitutional redress – exemplary/Aggravated damages

Heard: November 9, 2010 and March 25, 2011

P. A. Williams, J.

1. On November 20, 2006 Nicole-Ann Fullerton, the claimant, was convicted on three (3) counts of fraudulent conversion and was ordered to return to court on December 14, 2006 for sentencing.

2. On November 21, 2006 the claimant went to the Norman Manley International Airport and checked in to depart Jamaica for Baltimore, Washington D.C. at 1:30 p.m.

   While waiting in the departure lounge she was approached by two (2) immigration officers who requested her travel documents.

   Having examined her passport she was advised the judge at Half Way Tree wanted to speak to her and she was duly escorted to the Immigration Hall.

3. There a call was made and she was advised that she was to be carried to the police station on the premises.

There she was detained and eventually advised that the judge at Half Way Tree Resident Magistrate's Court said she was to be taken to the Duhaney Park Police Station and be brought before that court at 2 p.m. the following day.

4. Thus she was taken to that police station, placed in a cell and detained overnight and on the next day she was indeed taken to the court where after a hearing she was released at about 4:30 p.m.

5. On the 15th of June 2009, her appeal against her conviction and sentence was determined in her favour. She was, upon trying to leave, detained by a member of the Jamaica Constabulary Force for approximately two (2) hours after the ruling of the Court of Appeal.

6. She was escorted from the Court of Appeal, across the street to the Supreme Court where another officer advised that her presence was not necessary and that he, the officer in charge, would make the appropriate entry in the relevant book.

7. The claimant by way of claim form filed the 29th of March 2010 claims against the defendant the Attorney General to recover damages for false imprisonment; constitutional breach and/or assault arising in the first instance, between November 21 and 22, 2006 when the claimant was detained and assaulted commencing at the Norman International Airport and continued to the lock-ups at the Corporate Area Resident Magistrate's Court in the parish of St. Andrew; and in the second instance on June 15, 2009 when agents and/or servants of the defendant in the parish of Kingston wrongfully and unjustifiably assaulted and

detained the claimant after the Court of Appeal overturned the conviction of the claimant thereby entitling her to be at liberty. As a consequence of the foregoing the claimant suffered loss and damage and incurred expense.

8. This claim was served in the Director of State Proceedings on the 30th of March, 2010.

There was no response – no defence was filed.

On the 26th day of July 2010 on an application to enter judgment, the Learned Master Lindo heard from Mrs. Tameka Jordan for the claimant and Ms. Tova Hamilton instructed by the Director of State Proceedings for the defendant and granted permission for default judgment to be entered against the defendant with damages to be assessed.

9. At the time of hearing, the defendant had done nothing that would permit them to participate in the proceedings; however two representatives of the Attorney General's department were in attendance.

10. The claimant particularized her claim to breach of her constitutional rights as follows:-

(60) The claimant has a constitutional right to liberty

(61) On being charged the claimant was granted bail as is her constitutional right.

(62) The Learned Resident Magistrate having offered bail in terms permitting the claimant to travel, there was no lawful justification to prevent the claimant from boarding her flight to travel to Baltimore or to detain the claimant any at all.

(63) The Court of Appeal having pronounced the acquittal of the claimant:-

(a) there was no lawful justification for depriving the claimant of her liberty in contravention of Section 15 of the Constitution of Jamaica.

(b) there was no lawful justification for restricting the claimant's freedom of movement in contravention of Section 16 of the Constitution of Jamaica.

(64) In acting in the manner stated herein the servants and/or agents of the Government of Jamaica wrongfully and unlawfully deprived the claimant of protection from arbitrary arrest or detention, to freedom of movement and the protection of law and freedom of movement.

11. The particulars of Exemplary/Aggravated Damages were listed as follows:-

(65) The servants and or agents of the Government of Jamaica acted oppressively towards the claimant.

(66) In the case of the first instance of her false imprisonment, the servants and or agents of the state acted high handedly and arbitrarily by needlessly, unjustifiably and unlawfully detaining the claimant in spite of the bail conditions set by the Learned Resident Magistrate and remonstrations from the claimant that she had authority to travel overseas.

(67) In the case of the second instance of her false imprisonment, the servants and or agents of the state acted high handedly and arbitrarily by needlessly, unjustifiably and unlawfully detaining the claimant in spite of

remonstrations from the claimant and her counsel that the claimant was entitled to be at liberty.

(68) The claimant suffered loss and damage, and constitutional breaches for which the ordinary measure of damages, remedies and redress are inadequate.

(69) The claimant was deprived of her fundamental rights and freedom as a citizen of Jamaica to which she is and was entitled as guaranteed by the Constitution of Jamaica.

The Assessment

Re: False Imprisonment:- the facts

(A) The first period of imprisonment

12. One could argue that the officers who saw and recognized the claimant, may well have been aware of her conviction and thus were being careful not to cause a convicted person to flee her sentence.

13. It is her evidence that when the officers checked her papers they told her that the Judge at Half Way Tree wanted to speak to her – she understood them to mean Judge Pusey.

She explained that despite her apprehension she felt she had no choice and so got up and was "escorted" to the Immigration Hall.

14. She explained further her feelings of embarrassment from the time the officers approached her and during the time they escorted her to the Immigration Hall – she was being stared at by passengers in the lounge.

15. It is after a call was made that she was advised she would have to be taken to the police station.

She asked for and was given permission to make a phone call, after which she was escorted to the police station at the Norman Manley International Airport in view for all to see.

16. After an hour waiting in the holding area, an officer who the claimant describes as being in charge told her that in normal circumstances her travel documents would have been taken and she sent home but the Judge at Half Way Tree said she was to be taken to the Duhaney Park Police Station and taken to court on the next day at 2 p.m.

17. Thus she was detained and indeed the next day she was taken to court at 2 p.m. where the truth of those instructions seem to have been borne out as the court was ready to deal with her matter.

Significantly the relevant prosecutor, Miss Paula Llewelyn then the Senior Deputy Director of Public Prosecutions, was in attendance and, as the claimant describes it, made a long speech about her being a felon and attempting to flee the country.

18. After she was finished the claimant's attorney-at-law Mrs. Jacqueline Samuels-Brown, Q.C. addressed the court. The claimant said her attorney advised the court that she was on bail and permitted to travel as a "condition of the bail".

It was then that it appears checks were made on court documents and the claimant goes on to say that the judge indicated that she was not aware that she was permitted to travel and there was clearly a lapse in administration in relation

to this matter. She was released and now she was ordered to surrender her travel documents and a stop order put in place on her travelling.

19. Thus as a result of this "lapse" the claimant had been detained and kept in prison from approximately 1:30 p.m. on the 21st of November to 4:30 p.m. on the 22nd of November, 2006.

20. In assessing the award to be made under this heading, the factors that the courts have considered important are principally the injury to liberty i.e the loss of time and further the injury to feelings i.e the indignity, mental suffering, disgrace and humiliation with any attendant loss of social status and injury to reputation **[McGregor on Damages 17th edition – paragraph 37-007].**

21. In the instant case, in her submission counsel for the claimant Mrs. Jacqueline Samuels-Brown highlighted aspects of the detention which she urge is pertinent to an assessment under this heading.

22. First there was the embarrassment upon her being approached and escorted out of the departure lounge and eventually to the police station where she was prevented from moving or going anywhere.

23. She was handcuffed and taken by the police vehicle (siren blazing) to the Duhaney Police Station – and her departure from the airport was in full view of arriving passengers and employees of the airport.

In her witness statement the claimant spoke to how the police officer was driving fast and since her hands were handcuffed she was unable to hold on and was rocked from side to side in the vehicle. Her efforts to get them to slow down

was denied as it was explained to her that it was policy to drive fast with prisoners so that they cannot escape.

24. At the Duhaney Park Police Station she was prevented from speaking to her family members including her mother and became emotional.

From the evidence, the claimant indicated she was permitted to speak with her attorney-at-law and also her helper who she was embarrassed to have see her "like this". She was given a toothbrush and a clump of tissue. The handle was removed from the toothbrush and she had no toothpaste.

25. In the submission it is noted that she was placed in a 10 by 5 cell which had no light, she had to sleep on a concrete bed with no sheet or pillow. As it was cold she was forced to use newspaper to sleep on. The bathroom was filthy and she had to use a stick to operate it.

26. She suffered "public humility" as her arrest was televised on the news as well as in the written media on the front pages of both the Observer and Gleaner.

She had loss of appetite as the food was served to her through the dirty cell gates.

In her witness statement, the claimant indicated she had been given plantain sandwich for breakfast which she couldn't eat; she was given no lunch and by the time she was taken to court she had not eaten for over 24 hours.

27. It is further noted in the submission that as she entered the court house on the 22nd November, 2006, she faced further humiliation and embarrassment as her family, friends, strangers and the media "watch and took pictures as she entered".

28. The claimant said she had to arrange and do her own stop order.

The submission is that she bathed and ate for two (2) days after being detained.

In her witness statement she explained that the first time she ate and bathed was on the 22nd of November, 2006 at 6 p.m.

29. Another point noted in the submission was that she was bombarded with calls and messages from well wishers and curious callers.

She became emotionally and psychologically drained and had to consult a psychiatrist.

B) Re: the second period of imprisonment

30. On the 15th of June 2009, the claimant said she was finally acquitted of the charges by the Court of Appeal of Jamaica and it was indicated to her she was free to go.

Her attempt to leave was thwarted when a police constable approached her and told her she could not leave.

31. Efforts by her attorney –at-law to enquire at to the reason for this detention proved futile as the officer insisted on keeping the claimant in the lobby area and at one point was told she was to be processed.

32. The claimant said she was kept there for two (2) hours and could not leave to share in the celebration of her acquittal with her family and friends.

Eventually after the two (2) hours she was escorted to the Supreme Court – across the road for all to see again and with the media taking pictures.

33. The evidence of the claimant is that on her arrival there she was brought to the officer in charge who looked up from eating his lunch to say "Ok! Go".

No reason was given for her being prevented from leaving earlier.

In the particulars of claim it was said that the claimant and her police escort were told that it was not necessary that the claimant be present as he, the officer in charge, would make the appropriate entry in the relevant book.

34. In the submissions it was noted that the claimant was extremely embarrassed and upset and felt that her life was ruined and that she is struggling to put it back together.

The Medical Evidence

35. At the hearing, the medical report from Dr. Aggrey Irons dated October 28, 2010 was tendered :-

He first saw her on December 6, 2006 and he speaks of submitting an immediate report concerning his opinion and then subsequently giving oral evidence in early March of 2007.

This seems to have been in relation to the sentencing exercise which took place at that time.

He however said he carried out the unusual mental status examination and continued to see her for the purpose of psychotherapy and pharmacotherapy. He last saw her on October 20, 2010.

36. His significant findings were as follows:

(1) There was absolutely no evidence of malingering.

(2) She showed signs of anxiety and depression.

(3) She spoke earnestly of her flashbacks, panic attacks and recurrent night-mares.

(4) She displayed phobic avoidance responses particularly related to matters concerning police and the law.

(5) She displays signs of diminished self-esteem and a severe reduction in her ability to face public gatherings and events (agoraphobia)

"The above constitutes a symptom complex which is referred to as a sever post traumatic stress disorder which is directly attributable to the events preceding and subsequent to November 2006 which could be interpreted as wrongful arrest".

37. It is the doctor's opinion that the claimant will never fully recover from her post traumatic disorder but with approximately five (5) more years of psychotherapy and pharmacotherapy she should be able to resume a relatively normal lifestyle with a guarded prognosis.

The doctor further opined that any event which triggers the memory of these traumatic events will result in the recurrence in her symptoms and the prolongation of the disorder.

38. Further to this medical opinion, the claimant gave evidence of her having completed a law degree in 2006 and making plans to enter the Norman Manley Law School in 2010. She paid the requisite fees and was to have sat an entry examination in July.

She explained that having gone to the examination center she stayed outside and paced. She said she was paralyzed by fear. She felt she had a panic

attack and was not able to enter the building, hence could not do the examinations.

39. In her submissions Mrs. Samuels-Brown Q.C. offered the following cases, as guidance as to the amount of money the court is likely to award under this heading:

(a) **Sharon Greenwood-Henry v. The Attorney General of Jamaica** (unreported) Claim No. C.L. G116 of 1999 where in 2005 an award of $100,000.00 was made where the claimant was detained for 15 hours.

(b) **Earl Hobbins v. The Attorney General and Constable Mark Watson** (unreported) Claim No. C.L. 1998/H196 where in 2007 an award of $400,000.00 was made where the claimant had been falsely imprisoned for 28 hours.

(c) **The Attorney General v. Arthur Baugh** (unreported) SCCA No. 101/06 where in 2008 an award of $200,000.00 was made and appealed but upheld; for a claimant who had been detained for two (2) days.

In this final case the value as at the date of hearing was calculated to be $250,000.00 which it was submitted amounted to $6,000,000.00 at the current value.

40. In arriving at an appropriate award the court is here urged to bear in mind:-

(a) The psychological effect the false imprisonment has had on the claimant

(b) the unjustified arrest and detention.

(c) the inhumane conditions of the cell and conditions of the lock-up

(d) the public frenzy surrounding her arrest and the embarrassment and

humiliation she up to recently she still has to undergo.

(e) the irreparable damage to her reputation which is always inherent in false imprisonment and by her (being labeled as a fugitive)

(f) Her inability to adjust after the incident.

41. It is further submitted that -

> "the consequences of her false arrest on the basis of disobedience of the court's orders has more sinister implications than the cases cited which are characterized as merely excessive action on the part of the police. Additionally here there is the exacerbating factor of the press being alerted and national attention being drawn to her alleged defiance of a court order and contempt of court. Accordingly it is submitted that an appropriate sum would be $8,000,000.00"

42. The difficulty in attempting to assess the monetary value of one's freedom of movement it well documented in the several authorities which has had to assess such an award. When this loss of freedom is coupled with discernable medical/emotional condition such as post traumatic disorder the assessment becomes even that more difficult.

In the instant case the fact that the claimant is a young woman whose future will forever be affected by this experience is also significant.

43. The guidance to be had from the authorities quoted is curtailed by the particular circumstances of each. In particular while what this claimant was subjected to is regrettable, the abuse suffered by the claimant in the **Greenwood-Henry** case is far worst.

No further comparison will be drawn as the basic principle is that while guidance can be had from past authorities, each case must turn on its own particular circumstances and facts.

44. I must however confess that while I appreciate the mathematical formula that has been adopted to upgrade an award to a current value, I am not so clear as to how an award of $200,000.00 in 2008 was calculated to be a value at the time of hearing of $250,000.00 and yet the submission was that at current value (as at November 2010) amounted to $6,000,000.00.

I cannot make an award of the amount requested by the claimant.

45. Factoring all the particular features of this case, the fact of an officer feeling it necessary to ensure that a convicted young woman was not attempting to escape her punishment is the point at which the decision must start. It is also noted that the claimant has said that she was advised that the subsequent detention was an order of the Judge.

Whether such an order was ever made had not been disputed and the fact is that the court was convened to deal with her matter at the time she was told it would.

46. It could be argued therefore that though checks may have been made as to the appropriate procedure to be adopted in dealing with the claimant, the course ordered led to what turned out to be her wrongful, unlawful detention.

47. The circumstances of her detention after being freed by the Court of Appeal remain curious at best as nothing on the face of it can justify the failure to allow her to depart for two (2) hours after the court's decision was handed down.

Fortunately she was spared the placement in a cell or holding area but she still had to remain sitting in a public lobby against her will and desire.

48. It is noted that the fact of the great publicity surrounding her detention was proven by the exhibiting of the various newspaper articles printed reporting the incident.

It is recognized that this must be factored in when considering the overall effect the false imprisonment must have had and will continue to have on the claimant.

49. In the circumstances the total period of imprisonment will be estimated as 28 hours.

I find that the appropriate award therefore under this head is $800,000.00.

Malicious Prosecution

50. In her oral submission Mrs. Samuels-Brown Q.C. urged that the circumstances of her being taken into custody are akin to and mimic those of an offence having been committed.

The allegations, it was opined, were not just that the claimant was a private citizen seeking to circumvent criminal prosecutions but further, acting contrary to the bond she had entered into and was in disregard or contempt of the court's order.

The submission also asserted that essentially what was being alleged was a breach of the Bail Act and there was no basis on which there could be any reasonable belief that such a bail offence was committed.

51. In addition to the cases already cited and relied on the case of **Inasu Everald Ellis v. The Attorney General and Ransford Fraser SCCA No. 37/01** delevered December 20, 2004 was referred to. An award of two million dollars ($2,000,000.00) was made in circumstances where the claimant had been charged for several offences against the Larceny Act; had been to court on thirty-two (32) occasions before being acquitted and had been found to be psychologically destroyed. This award was for both malicious prosecutions and aggravated damages.

52. It is useful to note the comments of Mr. Justice Smith J.A at page 13-

> "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 firstly be made – see **Singh v. Toony Fong Ominbus Co. Ltd [1964] 3 All ER 925 at 927"**

53. The appropriateness of an award under this heading can properly be considered against the background of the guidance given as to requirements of this tort in **Wills v. Voisin [1963] 6 W.I.R. 50.**

Wooding C.J. listed the essentials which must be proved successfully by a claimant in order to establish a case of malicious prosecution.

(a) the law was set in motion against him on a charge of a criminal offence

(b) that he was acquitted of the charge or that otherwise it was determined in his favour

(c) that the prosecutor set the law in motion without reasonable and probable cause.

(d) that in so setting the law in motion, the prosecutor was activated by - malice.

54. The peculiar circumstances of the instant case does not make it abundantly clear who set the law in motion.

It can be taken that it was the immigration officers who first spoke to the claimant and examined her papers.

The question next arises would be, was this without reasonable and probable cause and further activated by malice.

55. It is not unbelievable that the immigration officers recognized the claimant and knew her to be one recently convicted. It is also acceptable that in the circumstances of not being aware of her bail status, they would have acted responsibly when they sought to make checks on her status.

56. It is significant that she was then advised in terms indicating that she was being held on the instructions of the judge – orders of a court.

There is no basis on which this assertion by her ought to be disbelieved and thus disregarded.

To my mind once this is accepted, to say that the officers acted without reasonable and probable cause and with malice seems unsubstantiated.

Hence I decline from making an award for malicious prosecution.

Constitutional Damages

57. The claimant further seeks constitutional/damages vindicatory damages for breach of sections 15 and 16 of the Constitution of Jamaica. In the submissions part of section 15 is highlighted:-

(1) No person shall be deprived of his personal liberty.....

(2) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that person.

And part of 16 was noted

"No person shall be deprived of his freedom of movement....."

Further section 25 which deals with enforcement of protective provisions was duly quoted.

The sections quoted as relevant are of course followed by pertinent exceptions.

58. It was argued that the damages for constitutional contravention is specifically pleaded as a separate head of damages as noted by Mr. Justice Sykes in **Sharon-Greenwood Henry v. The Attorney General of Jamaica** [supra]

The cases of **Siewchand Ramanoop v. The Attorney General of Trinidad and Tobago PCA No. 13 of 2004 and Tamara Merson v. Drexel Cartwright and the Attorney General PCA No 61 of 2003**, were relied on to establish the development in the approach of the Privy Council in cases were an award under this heading was considered.

59. It is thus without dispute that in the appropriate case such an award can be made. As Mr. Justice Sykes said in **Greenwood-Henry v. The Attorney General** [supra] at paragraph 19

"Constitutional or vindicatory damages are a unique and special kind of award. It is not every case of abuse that attracts this kind of award. That constitutional redress is a special remedy was reinforced by the Privy Council in the **Ramanoop** case (see paragraphs 24 and 25)

60. The posture of the court in these cases form the basis for the submission that the case at bar is an appropriate case in which an award for damages for breach of the claimants constitutional rights should be made.

It is significant that in the submissions the following comment of the Privy Council in the case of **Ramanoop** [supra] is noted –

"the nature of the damages awarded may be compensatory but should always be vindicatory and accordingly the damages may, in a appropriate case exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose".

61. The submissions made highlight the following factors in making out the case for an award:-

i) That while she sat in a public area of the departure lounge she was approached by two immigration officers who in front of all to see demanded her passport and then ordered her to accompany them. As this was occurring she was being stared at by passengers and employees of the airport. During all this she felt extreme embarrassment.

ii) On arrival at the Duhaney Park Police Station she was prevented from

speaking to her family members including her mother. She became emotional.

iii) She was placed in a 10 by 5 cell which had no light, she had to sleep on a concrete bed with no sheet or pillow. As it was cold she was forced to use newspaper to sleep on. The bathroom was filthy and she had to use a stick to operate it.

iv) She had to arrange and do her own stop order.

v) She was told by a female constable that she could not leave and was detained at the Court of Appeal for two (2) hours.

These were some of the factors urged in considering the false imprisonment circumstance.

62. In addition however Mrs. Samuels-Brown Q.C. noted the claimant's evidence that in court the Judge lamented that she was not aware that the claimant was permitted to travel. The submission continued.

> "This however was endorsed on the information. A simple check could have avoided the ordeal the claimant had to endure. There was thus no lawful basis for preventing the claimant from boarding her flight that day. The claimant was thus deprived of her constitutional right to liberty and this on the authority of a constitutional officer".

63. The complaint as to the treatment upon the detention after the order of the Court of Appeal concerns the manner she was spoken to and the fact that this detention was in the context where senior attorney-at-law had advised the officer as to the correct process.

64. In the circumstances a global sum of $4,000,000.00 was suggested for both breaches.

65. In the circumstances whereby the Privy council felt an award for constitutional damages were considered appropriate it should be noted the description given of the objectionable behaviour.

In **Ramanoop** [supra] the comment was that "the proceedings relate to some quite appalling misbehaviour by a police officer".

In the case of **Merson** [supra] the court spoke of "the wholesale contempt shown by the authorities, in their treatment of Ms. Merson, to the rule of law and its requirements of the police and prosecution authorities makes this in our opinion a very proper case for an award of vindicating damages" – paragraph 20 In reviewing the judgment of the trial judge, the Privy Council said:-

> "The learned Judge's indignation at the outrageous treatment to which, with no shadow of justification, Ms. Merson had been subjected by officers of the Bahamian prosecuting authority permeates this part of her judgment. The Court of Appeal endorsed her indignation" – paragraph 7.

66. It should be noted that in this latter case, the Privy Council considered the fact that many of the things done to Ms. Merson were ingredients of one or other of the nominate torts as well as being infringement of her constitutional rights but felt there was not a complete overlap.

However they still found:-

"There can be no objection, on the facts of this case, to an award to

Ms. Merson both of damages for nominate torts and of vindicatory damages for the infringement of her constitutional right".

67. In the instant case, it is significant that the deprivation of the claimant's personal liberty and freedom of movement in relation to her first period of detention was apparently on the order of the court. The subsequent embarrassment and indignity suffered by her in the circumstance surrounding her time spent in custody with its attendant publicity flowed from this order.

As Mrs. Samuels-Brown argued a simple check of the information easily available to the court could have avoided this situation.

68. It is also to be noted that in the face of such easily accessible information, the claimant was also subjected to being accused to being a felon attempting to flee the country in the address made to the court by the Prosecutor.

The attempts to portray her as one who was not obeying the court's orders to report to the police as a condition of her bail, were clearly made to portray her in an even worst light.

It is good that she had a book detailing her every attendance at the station which once shown to the officer called to prove the allegations against her, meant that he had to (as the claimant described it in her witness statement) "recant".

69. The claimant's evidence that after the checks were made properly the Judge indicated that she was not aware the claimant was permitted to travel and that there was clearly a lapse in administration in relation to this matter is also significant and could perhaps be considered to have compounded the situation.

What this lapse in administration caused was such that the arguments of Mrs. Samuels-Brown as to the need for vindicatory damages is very persuasive.

70. However I am satisfied that it is only in relation to the first period of detention that an award need be made.

In determining the amount I am guided by the comments of the Privy Counsel in Merson [supra]

> "The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complaint whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference mistreatment or oppression. The sum appropriate to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial Judge".

In the circumstances I find that an award of $1,000,000.00 is appropriate.

Exemplary/Aggravated Damages

71. It is immediately to be recognized that an award of this nature "comes into play whenever the defendant's conduct is sufficiently outrageous to merit punishment as where it disclose malice fraud cruelty insolence or the like" – **see McGregor on Damages 17th ed paragraph 11-0001.**

72. The words of Lord Devlin in **Rookes v. Barnard** [1964] AC 1129 remains the standard against which the behaviour must be judged.

"oppressive arbitrary or unconstitutional action by the servants of the government" – at page 1226.

73. An award under these headings was made in the **Merson** case as well as in the **Greenwood-Henry** case [supra].

In the latter in his judgment Mr. Justice Sykes spoke of the "injury to the claimant's dignity, pride and self-esteem"….. "the mental suffering and anguish suffered in the climate of fear created by [the police officer]". The treatment meted out to the claimant in that case, in the futile search for drugs on the claimant, was certainly degrading and offensive in the extreme.

74. In the instant case the principle of exemplary damages and aggravated damages as set out in **Leeman Anderson v. Attorney General of Jamaica** (pages 1-15 judgment) is referred to – no citation is given and the authority was not shared with the court.

75. The evidence relied on in support of an award being made under this heading is that:-

(a) The claimant was unlawfully arrested in full view of the other travelers, employees of the airport, friends and family and did hurt her feelings.

(b) The claimant was paraded in handcuffs with siren blazing in front of arriving passengers and employees. This would have foreseeable increased the likelihood of hurt and embarrassment.

(c) There was wide scale media coverage of her detention. This would have foreseeable increased the likelihood of hurt and embarrassment.

(d) Her unlawful detention and prosecution was unjustified.

(e) No expression of regret or apology.

(f) Her arrest was on the authority of a constitutional officer.

Additionally it was submitted that the conduct of the state to the claimant is indicative and supportive of the actions being arbitrary and oppressive.

76. It was noted that in the **Greenwood-Henry** case [supra] an award was made of $700,000.00 each for aggravated and exemplary damages which updates to $2,301,156.09 respectively.

An appropriate sum suggested was therefore $4,000,000.00.

77. The treatment meted out to the claimant in the circumstance of her wrongful arrest and detention to my mind does not reach that standard requiring punishment.

I have already recognized that the breach of her constitutional rights demanded redress but I do not agree that the behaviour of the officers as described was sufficiently egregious to demand an award of damages of either an exemplary and aggravated nature.

Special Damages

78. The claimant has made claim for special damages as follows:

a) Cost of airline ticket – US$400.00

b) Cost of processing fee – JA$850.00

c) Legal fees as follows:-

i) To attendance of attorney at Duhaney Park Police Station – JA$60,000.00

ii) To attendance of attorney at court on November 22, 2006 and application made one day's costs - JA$200,000.00

iii) to representations made by attorney on behalf of claimant on June 15, 2009 – JA$70,000.00.

79. There is no documentary proof offered for any of these amounts. It is always useful to bear in mind the posture of the courts in relation to this area.

In one of older cases in this area **Bonham-Carter v. Hyde Park Motel Ltd. (3) [(1948) 64 TLR at page 176] Lord Goddard C. J** commented:

> "Plaintiff's must understand that if they bring actions for damages it is for then to prove their damages; it is not enough to write down the particulars, and so to speak throw them at the head of the court saying. This is what I have lost, I ask you to give me these damages. They have to prove it"

80. It is submitted, in recognition of the absence of the requisite proof, that her witness statement pertaining to her expenses is sufficient.

> "Documentary proof is but one form proving your expenses. If there is evidence albeit not documentary evidence, then the amount claim is proved" is how the submission made in this regard is expressed.

Further the case of **Ellis v. Attorney General et al** [supra] is referred to for the statement that the claimant is entitled by law to claim legal fees.

The case of **Donovan Da Souza v. C.B. Duncan and Associates Suit No C.L. D096/98** decided on June 18, 2004 is noted to have confirmed the law that an award is appropriate in the absence of receipts once it is reasonable.

81. The courts have come to recognize that there are some instances where it would be unrealistic to expect that there would be documentary evidence to support claims made for special damages. Thus, where the case is properly made out and perhaps an explanation offered an award will be made without such strict proof. One must remain vigilant as to how far this requirement is allowed to be ignored as the position warned against by Lord Goddard must not be tolerated i.e. throwing up of figures.

82. In the instant case it is noted that there is a reasonable expectation that where legal fees are being claimed some documentary proof would be forthcoming – an invoice or a receipt evidencing the amount ought not, in the circumstances to be considered unrealistic to come by.

I accept that costs incurred in procuring discharge from a false imprisonment are recoverable. **Pritchel v. Boevey** (1833) 1 Cr. and M 775 is regarded as the case which established this principle. It is known that it is mostly in cases of malicious prosecution that damages for legal fees are normally claimed. However, I feel constrained from making any award for this special damage without strict proof thereof.

83. In her evidence the claimant explained that when taken into custody she had with her the ticket on which she intended to travel as well as the invoice and both were taken from her by the police. She was not allowed to keep any personal items.

She further explained that these documents were not returned to her and she has not been able to recover them.

In the circumstances, I think it appropriate to make this award to refund the claimant the cost of the ticket purchase for the travel she was prevented from making.

84. The claimant broadly asserted that she paid $850.00 processing fee for a stop order. If such a payment was made, it is not unrealistic to expect that a receipt would have been issued. In any event, I am not satisfied that this payment flows from her false imprisonment so to make it recoverable – without more.

The award

1. Special damages – US$400.00 with interest at 3% from November 22, 2006 to today's date.
2. General damages

False imprisonment - $800,000.00

Damage for constitutional contraventions - $1,000,000.00 with interest on the total amount at 3% from March 30, 2010 to today's date.

3. Cost in the sum of $200,000.00 was requested, therefore I will award cost to the claimant in this amount.