

an AC Delco Battery with serial no. 201101 on January 6, 2011 and sought the following reliefs:

- (a) Damages for False Imprisonment*
- (b) Damages for Malicious Prosecution*
- (c) Aggravated and Exemplary Damages*
- (d) Interest at such suitable rate as the Court will determine pursuant to the Law Reform (Miscellaneous Provisions) Act*
- (e) Costs*
- (f) Such further and/or other relief as this Honourable Court deems fit*

[2] The Claimant alleged that on or about the 6th day of January, 2011 he went to Stewart Industrial Limited to purchase an AC Delco Battery bearing serial no. 201101. He further alleged that he was issued with a cash receipt in respect of the said purchase which was duly stamped as “paid” and signed by the cashier and it was also stamped by the security guard also as “checked.” On the 14th day of January, 2011, the Claimant was arrested for the offences of Obtaining Goods by False Pretence and Conspiracy to Defraud, taken to the Fraud Squad and to the Kingston Central Lock Up, before he was released on bail. The Claimant made several appearances in the Half-Way-Tree Parish Court and was acquitted after a full trial on the 28th day of February, 2014.

[3] The Defendant in its defence, stated that Sergeant Hardley had an honest belief that the Claimant fraudulently represented to Stewart Industrial Limited that he was purchasing the battery for Jamaica Biscuit Company Limited (JAMBISCO) based on information received and investigations conducted. It was further stated that the Claimant’s arrest and charge were justifiable as there was reasonable and probable cause to do so and it was not actuated by malice.

[4] I wish to note here, that the Defendant did not comply with the Case Management Conference Orders that were made on the 10th day of January, 2019 for the filing and exchanging of witness statements. They filed an application for relief from

sanctions which was refused by Master Carneige. It therefore follows that the Defendant is not able to rely on any witness statement in this matter. The only witness statement before this Court is for the Claimant. Therefore, there is no need for this Court to delve into a determination of the factual evidence regarding liability of the Defendant.

ISSUE

[5] In the light of the above, it is for me to determine the quantum of damages that is to be awarded to the Claimant arising from the January 14, 2011 arrest and charge.

SUBMISSIONS

[6] I wish to thank Counsel for their submissions and supporting authorities which provided valuable assistance in deciding the issues. They were thoroughly considered and will be dealt with under each issue below. I also wish to note that I do not find it necessary to address all the submissions and authorities relied on but will refer to them to the extent that they affect my findings.

[7] It is prudent for me to note that there are some discrepancies with the figures submitted by Learned Counsel for the Claimant and the Defendant. In some instances, I did not arrive at the same updated figures that they submitted. Therefore, I will endeavour to explain those discrepancies as they arise. For ease of understanding, I will only use the CPI for July 2023 throughout this judgment.

LAW AND ANALYSIS

A. FALSE IMPRISONMENT

[8] The Claimant alleged that he was detained in custody for approximately eight (8) hours before he was released on bail. The Defendant in its Defence denied this. The Amended Particulars of Claim lists the particulars of damages for false imprisonment as follows:

(a) Loss of liberty for approximately eight hours

- (b) *The Claimant was gainfully employed at the time and suffered loss of income and was put to other expense*
- (c) *The Claimant was held in deplorable conditions*
- (d) *The Claimant faced the fear and anxiety of groundless detention, charges and prosecution against him*
- (e) *The Claimant was suspended from his employment as Fleet Supervisor with Jamaica Biscuit Company, and later terminated, based on his arrest*
- (f) *Injured and hurt feelings*
- (g) *Embarrassment*
- (h) *Inconvenience*

[9] I found the case of **John Crossfield v The Attorney General of Jamaica and Corporal Ethel Hamilton** [2016] JMCA Civ 40 to be useful. Morrison P in that case relied on the following passage from Harvey McGregor QC, **McGregor on Damages**, 17th edition, para 37-007 for the basis upon which a court will ordinarily make an award of damages for false imprisonment:

“The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left very much to the jury’s or judge’s discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation.”

[10] Learned Counsel for the Claimant submitted that the parties have agreed the sum of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**¹ under this head of damages.

[11] Learned Counsel for the Defendant submitted that the practice of the Courts in calculating damages for false imprisonment is to make a single award, having considered the principal aspects as listed in **John Crossfield** and the Court is to

¹ This figure was arrived at using the CPI for April, 2023.

look at comparable awards and apply the Consumer Price Index (CPI) to them as stated in **The Attorney General v Glenville Murray** [2010] JMCA Civ 50. Learned Counsel submitted several cases of which I found **Inasu Everaldd Ellis v The Attorney General and Ransford A. Fraser** (unreported) Supreme Court Civil Appeal No. 37/01 delivered December 20, 2004 to offer useful guidance.

- [12] In **Inasu Everaldd Ellis**, the Appellant was detained and interrogated for seven (7) hours, and on the same day was charged with several offences. He was thereafter released on bail. The Court of Appeal held that an award of \$100,000.00 was an appropriate award given the trial judge's findings that she accepted that the period of imprisonment caused him to feel humiliated, embarrassed and disgraced which would have resulted in a loss of dignity, loss of liberty and further, caused mental suffering. Likewise, in the case at bar, the Claimant has claimed that he was fearful, anxious, embarrassed, inconvenienced and had injured and hurt feelings.
- [13] Learned Counsel for the Claimant submitted that there was an error in the calculations utilized by Learned Counsel for the Defendant as where the Court of Appeal increases or decreases an award in the Court below, the Court of Appeal's award is to be substituted for and thereby replaces the award made by the trial judge as at the date of the judgment in the Court below. I agree with Learned Counsel for the Claimant, therefore the award made by the Court of Appeal in **Inasu Everaldd Ellis** is as at September 2001, which was the date of judgment in the Court below.
- [14] The award in **Inasu Everaldd Ellis** updates to **SIX HUNDRED AND TWO THOUSAND SEVEN HUNDRED AND SIXTY-FOUR DOLLARS AND NINETY-EIGHT CENTS (\$602,764.98)** using the CPI for July 2023. I agree with the parties that a similar award would be appropriate given the circumstances.

B. *MALICIOUS PROSECUTION & AGGRAVATING DAMAGES*

- [15] Learned Counsel for the Claimant, in relying on the case of **Inasu Everaldd Ellis**, submitted that it would be appropriate to consider malicious prosecution and

aggravated damages together where the criminal prosecution continued for an inordinately long time as the 2 heads of damages would be inextricably bound up. There are several cases where the 2 heads of damages are considered together and an award is made for both (see Inasu Everaldd Ellis, Herman Needham v The Attorney General of Jamaica (unreported) Suit No. C.L. 2000/N037 delivered on the 10th day of April, 2003 and Allan Currie v The Attorney General of Jamaica (unreported) Claim No. CL 1989/C-315 delivered on the 10th day of August, 2006). I find favour with the submissions of Learned Counsel for the Claimant and I will adopt the approach of the Court of Appeal and consider the aggravating circumstances in this case.

- [16] Learned Counsel for the parties both relied on the factors outlined in the case of Roderick Cunningham v The Attorney General for Jamaica, Superintendent Clinton Laing and Corporal Horace Fitzgerald [2014] JMSC Civ. 30 and which were affirmed by the Court in Rosalee Stewart v The Attorney General of Jamaica [2017] JMSC Civ. 104. Edwards J in Roderick Cunningham stated that:

Damages for malicious prosecution are usually awarded where a Claimant proves that he was charged for a criminal offence, the law being put in motion against him by the defendant; that the case was determined in his favour by virtue of being acquitted or otherwise and that the prosecutor in setting the law in motion had been actuated by malice or had acted without reasonable or probable cause. The Claimant must also prove that he suffered damage as a result. Section 33 of the Constabulary Force Act reads:

Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant.

*The factors affecting an award in this category are: **the seriousness of the offence charged, length of time the prosecution lasted, number of times he attended court, any damage to reputation or credit, mental distress or anxiety, humiliation and or disgrace and any inconvenience, indignity and discomfort caused from the fact of the charge against him.** Any anxiety felt from the arrest or imprisonment up to the hearing of the case is also included and is the same as would have*

*been recoverable for false imprisonment, the prosecution having created a risk of conviction and loss of liberty and resulting injury to feeling. See McGregor on Damages 17th ed para 38-004. **[emphasis mine]***

[17] The Amended Particulars of Claim listed the particulars of malice and/or absence of reasonable cause as follows:

- (a) *The Claimant advised the said Sergeant Ricardo Hardley that he had a cash sales receipt, in respect of the purchase of the said battery*
- (b) *Sergeant Hardley ignored the Claimant's plea to be allowed to produce his cash sales receipt, and proceeded to charge him. The Claimant was arrested while carrying out his work duties, and therefore the receipt was not in his possession, at the material time, but could be easily produced.*
- (c) *Sergeant Hardley gave evidence on cross-examination at the Trial in Half-Way-Tree Court that his failure to request production of the receipt was due to 'oversight.' The original cash receipt was tendered at the criminal trial.*
- (d) *There were cameras at the said Stewart Industrial Limited and which would have recorded over the said purchase.*
- (e) *Sergeant Hardley also refused to request and inspect the video footage.*
- (f) *That by the time a request was made for the video footage it had already been recorded over by subsequent footage.*

[18] In **Denese Keane-Madden v The Attorney General of Jamaica and Corporal T. Webster** [2014] JMSC Civ 23 the principles that the Court must consider when looking at an award for aggravated damages was set out. Edwards J stated that:

[45] *Aggravated damages are imposed on a Defendant whose conduct increased the injury to the Claimant, causing distress, embarrassment and or humiliation and damage to reputation. In McGregor on Damages 17th edition, the learned editors in considering the factors tending to lend support to an award under this head said at page 1400 paragraph 37-012:*

"The manner in which the false imprisonment is effected may lead to aggravation or mitigation of the damage and, hence of the damages. The authorities illustrate in particular the general principle stated by Lawrence L. J. In Walter v Alltools "that any evidence which tend to aggravate or mitigate the damage to a man's reputation which flows

naturally from his imprisonment must be admissible up to the moment when damages are assessed. A false imprisonment does not merely affect a man's liberty; it also affects his reputation. The damages continue until it caused to cease by an avowal that the imprisonment was false".

[46] *This approach was recognised and adopted by Sykes J in the unreported judgement in Leeman Anderson v The Attorney General of Jamaica CLA 017 of 2002, decided July 16th 2004. Aggravated damages are awarded where the defendants conduct is sufficiently outrageous to merit condemnation and punishment. The outrageous behaviour usually carries features of malice, fraud, cruelty, insolence and the like. See McGregor on Damages 17th edition at paragraph. 11-0001. Damages under this head is compensatory and not to be lumped with exemplary damages which are punitive.*

[19] The Amended Particulars of Claim listed the particulars of aggravated and exemplary damages as follows:

- (a) *The Claimant was subjected a [sic] false imprisonment, and his wrongful arrest occurred in the presence of the public.*
- (b) *The said Sergeant Hardley acted in a high handed manner.*
- (c) *The conduct of the said officer was arbitrary.*
- (d) *The Claimant has suffered a serve [sic] psychiatric reaction as a consequence of his arrest, false imprisonment, assault and belated and malicious prosecution.*
- (e) *Inconvenience: need to attend Court on the occasions referred to above.*
- (f) *Having no regard for the rights, welfare and well-being of the Claimant.*

[20] Learned Counsel for the Claimant submitted that the Claimant's impeccable qualifications and certifications are to be taken into account in terms of the humiliation and injury to his dignity in making 34 appearances in criminal court to answer charges for defrauding Stewart Industrial of a battery that he paid for. The Claimant rose to the rank of Corporal in the Jamaica defence Force and received a medal of honour for his service in the Grenadian Revolution. It was further submitted that the Claimant's reputation would have no doubt been tarnished in the mind of any right-thinking member of society. It was also submitted that the

Claimant would have been embarrassed and lost his dignity by having his name shouted in the corridors of the Parish Court on 34 occasions.

[21] Learned Counsel for the Claimant submitted that a figure of \$8,000,000.00² is a suitable award and directed this Court to the following cases:

- (a) **Inasu Everaldd Ellis** where the claimant was charged with offences under the Larceny Act and was later interdicted and subject to disciplinary proceedings in his employment at the Ministry of Agriculture. The claimant was also a Justice of the Peace and Lay Magistrate. The prosecution lasted for 4 years and 7 months from March 1, 1991 to October 4, 1995 with 32 appearances in Court. The Court of Appeal awarded \$2,000,000.00 for malicious prosecution including aggravated damages which updates to \$12,055,299.50 using the CPI for July 2023.
- (b) **The Attorney General of Jamaica & Cons. Ransford A. Fraser v Harvey Morgan** Supreme Court Civil Appeal No. 11 of 2003 where the respondent who was charged with several offences under the Larceny Act was awarded \$2,483,440.60 for malicious prosecution inclusive of aggravated damages. That figure updates to \$13,151,175.30 using the CPI for July 2023. The prosecution lasted 4 years and 7 months. The Court of Appeal held that the case of **Inasu Everaldd Ellis** ought to have guided the trial judge as the parties were both charged for similar offences, the parties were both detained for several hours and they were both influential and well respected men in their community. The Court of Appeal made an award similar to that in **Inasu Everaldd Ellis** and applied the CPI.

² This figure was arrived at after an analysis of the following cases **Inasu Everaldd Ellis**, **Harvey Morgan** and **Herman Needham** while using the CPI for April, 2023.

(c) **Herman Needham**, where the Learned Judge in relying on the case of **Inasu Everaldo Ellis**, accepted that a protracted prosecution was an aggravating factor in considering a suitable award for malicious prosecution. The exact period of prosecution was 2 years and 6 months and an award of \$1,500,000.00 was made for malicious prosecution and aggravated damages which updates to \$7,785,714.29, using the CPI for July 2023. It was submitted that this case is a suitable case in assessing damages under this head as the nature of the charges were similar, both parties were charged with conspiracy to defraud, the length of the prosecution was slightly greater for the Claimant in the case at bar, they both suffered reputational harm (loss of employment arising from the charges) and there was obvious injury to feelings caused by the prosecution and the peril of convict.

[22] Learned Counsel for the Defendant submitted that the Claimant's prosecution lasted between the 14th day of January, 2011 when he was charged, to the 28th day of February, 2014, when the proceedings were terminated in his favour and he was found not guilty. In those circumstances, it was submitted that the following cases are instructive:

(a) **Roderick Cunningham** – The claimant who was charged with Shooting with Intent, Wounding with Intent, Illegal Possession of Firearm and Illegal Possession of Ammunition was awarded \$1,600,000.00 for malicious prosecution. The prosecution lasted from May 2000 to March 2005, a period of 4 years and 10 months with over 40 court appearances. The charges were considered to be serious, all carrying prison terms of upwards of fifteen years. The claimant was prosecuted after being shot and having lost his leg as a result of the shooting, despite the fact that a forensic swab of his hand had shown that he did not fire a weapon on the night he was arrested. The award updates to \$2,577,339.90 using the CPI for July 2023.

(b) **John Crossfield** – The claimant was charged with unlawfully dealing in cocaine, unlawfully taking steps to import cocaine, unlawfully having cocaine in his possession, unlawfully having in his possession warehouse-breaking implements and breaking and attempting to enter the warehouse and was awarded \$1,500,000.00 malicious prosecution. That figure updates to \$3,503,571.43 using the CPI for July 2023. The prosecution lasted for 4 years and 11 months from May 1996 to March 2001. The matter was called up over 30 times and the appellant was obliged to appear before the Half-Way-Tree Court. During that period various witnesses gave evidence for the prosecution until they decided to offer no further evidence against the appellant and the proceedings were dismissed.

(c) **Janece Greenwood v Zephaniah Aarons, Milton Grey and The Attorney General of Jamaica** [2016] JMSC Civ 149 – The claimant was charged with Larceny as a Servant and the prosecution lasted for 3 years and 3 months. After the trial started, the witness who started to give evidence never returned to complete same and the Crown offered no further evidence against the claimant and the case was dismissed. The claimant claimed for general damages which included aggravated and vindictory/exemplary damages. The claimant was awarded \$1,900,000.00 for general damages which now updates to \$6,488,772.85 using the CPI for July 2023.

[23] In those circumstances, Learned Counsel for the Defendant submitted that a reasonable award for malicious prosecution falls between \$2,000,000.00 and \$2,500,000.00³. Learned Counsel for the Defendant contended that there is no

³ This figure was arrived at based on Learned Counsel for the Defendant's analysis of the cases as submitted. Based on her calculations of the 3 cases, the range of damages was from \$2,000,000.00 to \$2,500,000.00 using the CPI for April, 2023. However, in some instances the issue identified at paragraph 13 of this judgment affected Learned Counsel's calculations.

basis on which to mount a claim for aggravated damages as there is no evidence of high-handed, outrageous or otherwise unacceptable conduct on the part of the officer. It was submitted that the circumstances of this case do not lend themselves to support any award for aggravated damages.

[24] Respectfully, I find no favour with the cases of **Roderick Cunningham** and **John Crossfield**. The claimants in those cases were charged with more serious offences and their prosecution lasted for an even longer period than that of the Claimant in the case at bar. They are not useful guides that I can properly rely on. The prosecution in **Inasu Everaldd Ellis** and **Harvey Morgan** lasted for longer periods than that of the Claimant at bar, therefore in using them as a guide it is clear that an award to the Claimant at bar must be less. The case of **Janece Greenwood** was also not helpful as in that case no claim for damages for malicious prosecution and no award for same was made.

[25] In my view, the case of **Herman Needham** is one that is most comparable to the case at bar and is the most helpful. I agree with the submissions of Learned Counsel for the Claimant that the nature of the charges was similar and that they both suffered loss of employment. It was held in **Herman Needham** that the protracted handling of the matter and that time period must be considered in considering damages for malicious prosecution. This is also applicable to the Claimant in the case at bar, as his matter went on for 3 years and a little over 1 month.

[26] I have considered the seriousness of the offence, the protracted prosecution and the damage to the reputation of the Claimant given the nature of his occupation and his qualifications. I have also considered the fact that the Claimant in the case at bar had a receipt for the purchase of the item which was available to be shown to the arresting officers and to the Court, and which for whatever reason whether it was an oversight or not, was not done and resulted in the matter proceeding to trial at the Half-Way-Tree Parish Court. I find that the manner and the

circumstances of the prosecution of the Claimant were such as to lead to an aggravation of damages.

[27] I am therefore minded to make a similar award, taking into account the fact that the length of time the prosecution lasted against the Claimant at bar was longer than that of the claimant in Herman Needham and would therefore warrant a higher award. It is therefore my judgment that the sum of **EIGHT MILLION DOLLARS (\$8,000,000.00)** is reasonable in the circumstances for malicious prosecution including aggravated damages.

C. EXEMPLARY DAMAGES

[28] For ease of reference, I will reiterate the particulars of the aggravated and exemplary damages as particularized in the Amended Particulars of Claim:

- (a) *The Claimant was subjected a [sic] false imprisonment, and his wrongful arrest occurred in the presence of the public.*
- (b) *The said Sergeant Hardley acted in a high handed manner.*
- (c) *The conduct of the said officer was arbitrary.*
- (d) *The Claimant has suffered a severe [sic] psychiatric reaction as a consequence of his arrest, false imprisonment, assault and belated and malicious prosecution.*
- (e) *Inconvenience: need to attend Court on the occasions referred to above.*
- (f) *Having no regard for the rights, welfare and well-being of the Claimant.*

[29] Edwards J in Denese Keane-Madden in considering an award of exemplary damages stated that:

[56] *The House of Lords in **Rookes v Barnard** [1964] AC 1129 at pages 1226 – 1227 laid down three categories of cases where exemplary damages may be awarded: "...there are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal...The first category is oppressive, arbitrary or unconstitutional action by the servants of*

the government...Cases in the second category are those in which the Defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff...To these two categories which are established as part of the common law there must of course be added any category in which exemplary damages are expressly authorised by statute."

[57] *In the judgment delivered by Luckhoo P (Ag), the Court of Appeal of Jamaica in **Douglas v Bowen** [1974] 22 W.I.R. 333 at page 344 stated that:*

*"...the categorization decided in **Rookes v Barnard** as explained in **Cassell & Co. Ltd. v Broome** ought to be adopted and applied in Jamaica..."*

[58] *Whether or not to make an award in this category is at the discretion of the judge. It is generally exercised in favour of the claimant where a defendant exhibits unacceptable and or outrageous behaviour towards the Claimant which connotes malice, ill-will, cruelty, insolence and fraud. In fact, it may be argued that it is the conduct of the police which has generated many of the awards to date, both here and elsewhere in the Commonwealth.*

[30] Learned Counsel for the Claimant submitted that an analogy can be drawn with this case and the case of **Roderick Cunningham** where the crown continued to prosecute the respondent in that case in the face of negative swab results. The Court of Appeal in **Roderick Cunningham** found that the continuous prosecution was arbitrary, high handed and was conscious wrongdoing and awarded \$1,000,000.00⁴ for exemplary damages. Learned Counsel for the Claimant also relied on the case of **Delia Burke v Deputy Superintendent Carol McKenzie and The Attorney General of Jamaica** [2014] JMSC Civ. 139. In that case the police raided the claimant's house and charged her for larceny of construction material, when she was in possession of a receipt for the said purchase. The arresting officer refused to look at the receipts the claimant had and ignored the claimant's pleas to look at them. It was contended that a similar fact pattern was set out in the Claimant's witness statement. Learned Counsel for the Claimant further submitted that the case of **Roderick Cunningham** is more applicable and an award of

⁴ This figure updated to \$1,582,389.16.

\$1,000,000.00 would be appropriate for the Claimant in the case at bar given that the charges in **Roderick Cunningham** were more serious.

- [31] Learned Counsel for the Defendant submitted that there is no basis on which to mount a claim for exemplary damages as there is no evidence of high-handed, outrageous, or otherwise, unacceptable conduct on the part of the officer.
- [32] It is clear from the cases that there are 3 categories of cases in which exemplary damages may be awarded. Even though it was not specified which category applies here by Learned Counsel for the Claimant, it is clear that the first category would be applicable to the case at bar. Daye J in **Everton Foster v The Attorney General and Anthony Malcolm** (unreported) Suit No. C.L. F-135-1997 delivered on July 18, 2003 stated in relation to the first category under this award that the typical award would be in a successful action for trespass, false imprisonment or malicious prosecution against the police. Daye J further stated that the conduct of the defendant must merit punishment.
- [33] I found the case of **Delia Burke** to be useful. Along with the submissions of Learned Counsel for the Claimant, in that case the arresting officer entered the claimant's home without proof of a warrant to search and refusing to show any search warrant. McDonald-Bishop J found that, *"the invasion of one's privacy by agents of the state in the sanctity of his or her home, especially at night, and to restrain that person's liberty without lawful authority, justification or excuse under such circumstances, is serious enough for the court to penalise such conduct and to take steps to deter such conduct in the future. The police should serve and protect and not seek to violate the rights of the citizens, particularly, in the sanctity of their homes, without good and justifiable reason and to do so in a high-handed and oppressive manner."* That is what led to the award of the \$250,000.00 in exemplary damages. While the circumstances surrounding the officer's not looking at the receipts for the purchases are present in both cases, the circumstances surrounding the Claimant in **Delia Burke** are more severe. The police officers entered her home without a search warrant and that is the conduct which

McDonald-Bishop J referred to in paragraph 87 of her judgment. However, I am also mindful of the fact that the Claimant in **Delia Burke** was not prosecuted or charged, which is not the case for the Claimant in the case at bar.

[34] Respectfully, I did not find the case of **Roderick Cunningham** to be useful. In that case the prosecution continued even in light of the fact that no gun powder residue was found on the hands of the respondent. Respectfully, I cannot agree with Learned Counsel for the Claimant that the cases are comparable. It was the actions of the police which warranted an award of exemplary damages. Edwards J stated that, *“Their actions of the police handcuffing the amputee to his bed after amputation under police guard was oppressive and cruel, their imposition of charges of shooting with intent and wounding with intent, the continued prosecution of said charges in the face of negative swab results was arbitrary and high handed. The failure to take the Claimant to court within a reasonable time to be considered for bail was unconstitutional and callous. Their actions taken as a whole might be considered to be outrageous in the extreme.”*

[35] I remind myself that the purpose of exemplary damages is to punish and deter as was said by Lord Devlin in **Rookes v Barnard**:

“In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may of course be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then they can award some larger sum.”

[36] In these circumstances, I agree with the submissions of Learned Counsel for the Defendant that there is no evidence of high-handed, outrageous, or otherwise, unacceptable conduct on the part of the police officer. In Delia Burke, McDonald-Bishop J paid due regard to the dicta of the Court of Appeal in The Attorney General v Noel Gravesandy in which the court, after a review of the key authorities on the subject, including Broome v Cassells & Co. Limited [1972] 2 W.L.R. 645 and Rookes v Barnard, established the following principles:

- (i) *The fact that the trial judge may find the conduct to be oppressive and arbitrary does not ipso fact lead to an award of exemplary damages. It is not in every case in which the conduct is found wilful or wanton that exemplary damages should be awarded.*
- (ii) *The judge must first rule whether evidence exists which entitled a jury to find facts bringing a case within the categories does not of itself entitle the jury to award damages purely exemplary in character.*
- (iii) *The judge must first be careful to understand that nothing should be awarded unless he is satisfied that the punitive or exemplary element is not sufficiently met within the figure which has been arrived at for the plaintiff's solatium which is the subject of the compensatory damages in the assessment of which aggravated damages will be awarded.*

[37] While the conduct of the police officer was unfortunate, it is my view that the Claimant is adequately compensated by an award of aggravated damages. The actions of the police officer fall short of the kind of high-handed and oppressive behaviour that is required in making an award for exemplary damages.

D. SPECIAL DAMAGES

[38] The Claimant is claiming special damages under 2 headings namely, legal fees and loss of income. Special damages were particularised in the Amended Particulars of Claim as follows:

Loss of income from March 14, 2011 to November 30, 2016 and continuing at \$103,733.36 per month - \$7,056,589.00

Attorneys costs (Legal fees) to defend the proceedings in the Half-Way-Tree Parish Court - \$4,064,092.00 plus disbursements

[39] It is trite law that every item of special damages must be specifically pleaded and proved, however the Court may accept and rely on oral evidence. There are circumstances where there is absence of strict proof and justice demands that an award should be made. However, there must be cogent facts and circumstances available for them to exercise this flexibility (see **Central Soya of Jamaica Limited v Freeman** (1985) 22 J.L.R. 152, **Caribbean Cement Company Limited v Freight Company Management Limited** [2016] JMCA Civ 2, **Attorney General of Jamaica v Tanya Clarke (nee Tyrell)** (unreported) Suit No. C.L. 2000/C164 delivered December 20, 2004 and **Julius Roy v Audrey Jolly** [2012] JMCA Civ 53).

I. Legal Fees

[40] In relation to this heading, an invoice in respect of the services rendered was tendered by consent. That invoice related to the criminal matter at the Half-Way-Tree Parish Court and it is not in dispute that a claimant may recover costs incurred in procuring their discharge from imprisonment. (see **Pritchett v Boevey** (1833) 1 Cr. & M. 775) There is nothing to doubt the veracity of the Claimant that he paid the sums as claimed as he was not cross-examined on this issue. However, the issue that arises is whether the sums as claimed were reasonably incurred.

[41] Learned Counsel for the Claimant relied on the case of **Inasu Everaldd Ellis** where the Court of Appeal increased the award for legal fees to \$1,000,000.00 as they assessed that to be a reasonable sum, in spite of the invoice from the Attorney in the sum of \$1,323,525.00. The increase in the award was based on Counsel's years of experience and for legal work for 4 years and seven months of representation. Learned Counsel also relied on the case of **Delia Burke** where the claimant claimed special damages for legal costs in the sum of \$120,000.00 and tendered into evidence a receipt in support of same. The Court rejected the figure and found that the figure was not reasonably incurred in procuring the claimants release as there was no evidence that it was due to her Attorneys intervention that she was released. Instead, the Court accepted that the Attorney was engaged to

protect the claimant's interest and he had to disrupt his schedule to attend on the police station at that time of the night which would have been outside of normal working hours. The Court instead awarded \$80,000.00 for legal fees.

- [42] Learned Counsel for the Claimant contended that in his client's case the matter went to a full blown trial, witnesses were called and cross-examined and verdict rendered. It was no doubt the effort of Counsel, that led to the Claimant's acquittal and not the police realizing their error. Learned Counsel further contended that this Court can derive guidance from Inasu Everalld Ellis, as the Court of Appeal reduced the invoice by one-third. Learned Counsel also contended that the matter in Inasu Everalld Ellis was not tried, unlike the matter in the case at bar. Therefore, Learned Counsel submitted, the sum of \$3,000,000.00, which is one-third of the invoice that was tendered, is reasonable in this case for a trial in the Parish Court that lasted more than 3 years, required 34 appearances, research and written final arguments.
- [43] On the other hand, Learned Counsel for the Defendant contended that the invoice tendered does not indicate the Attorney(s) rate neither did it specify the amount of time spent on each listed item. The invoice would therefore not provide a true representation as to the time spent for the work done, therefore there is no proper basis on which the sums claimed can be justified. Learned Counsel for the Defendant further submitted that the sums being claimed are exorbitant for a Parish Court matter notwithstanding that the fact that the matter spanned three (3) years. The Court was directed to the Judicature (Resident Magistrates) (Tariff of Fees) (Amendment) Rules, 2013. Respectfully, I do not agree with this aspect of the submissions. The Tariff of Fees Rules do not apply to criminal matters in the Parish Court. Learned Counsel submitted that the sum of \$1,000,000.00 would be a reasonable sum to be awarded for Attorney fees for the Parish Court matter.
- [44] Having examined the invoice as tendered, I will accept that the invoice is for trial costs. However, as Learned Counsel for the Defendant so rightly submitted, the invoice is not a true representation as to the amount of time spent on each listed

item. Taking guidance from **Delia Burke** and **Inasu Everaldo Ellis**, I am minded to award to the Claimant half the cost of the fees incurred. I took into account the fact that the length of the time of the prosecution was a little over 3 years with 34 court appearances, that the matter went to trial (witnesses examined and cross-examined) and a verdict was rendered. It is therefore my judgment that the Claimant be awarded \$2,023,134.00 for legal fees.

II. Loss of Income

[45] Learned Counsel for the Claimant submitted that in January, 2011 his client was employed to JAMBISCO as its Fleet Supervisor and was responsible for the servicing and maintenance of the JAMBISCO fleet which comprised 147 vehicles. The Claimant was suspended without pay, but once he was committed for trial his services were terminated effective January 27, 2011. The Claimant worked at JAMBISCO for thirteen (13) years. Given the nature of the charges, he faced challenges securing new employment while the criminal prosecution was pending as he had been fingerprinted. Learned Counsel for the Claimant relied on the cases of **Janece Greenwood** and **Herman Needham**. Learned Counsel directed this Court to paragraphs 104 and 105 of **Janece Greenwood**, where the Court in dealing with aggravated damages found that even though the Claimant was not convicted but was fingerprinted, the mere accusations, charge and arrest, with the resulting negative perceptions, would have a negative effect on her ability to gain employment. The Court further held that it was not hard to see that her reputation would be tarnished and the claimant quite likely would have been viewed as dishonest and untrustworthy in a profession which is built on fiduciary responsibilities requiring trust and confidence. Learned Counsel relied on the case of **Herman Needham** to show that even in a case where the claimant's employer was the Complainant who caused the charge to be made, the Court can still make an award for loss of income arising from the criminal prosecution.

- [46]** Learned Counsel further submitted that her client made attempts to mitigate his loss by securing other employment, however he was unsuccessful. It was contended that the reasonable likelihood of the Claimant securing employment after the action was severely diminished as he was fifty-three (53) years at the time when the claim was filed. The Claimant is seeking loss of income from March 14, 2011 to November 30, 2016.
- [47]** On the other hand, Learned Counsel for the Defendant submitted that based on the evidence before the Court, the Claimant has not strictly proven that he was earning \$103,733.36 as his monthly income as all the payslips tendered into evidence showcase a different basic pay and none of them has the sum as claimed by the Claimant. Therefore, it was submitted that the Claimant has not proven his loss, upon a balance of probabilities, and the Court should not award anything under this head of damage. Learned Counsel further contended that there was no evidence forthcoming from the Claimant, to even remotely proffer an explanation as for the different basic pay he previously received, as evidenced by his exhibited payslips. There was no explanation, whether from the Claimant or his employees, as to what his pay would have been during the period of his 'loss.' Learned Counsel contended that an explanation would have been necessary as there is an unresolved consistency between the amount he stated in his statement to be his monthly income and the sums exhibited in his payslips. It was further contended that if the Court is so minded to give the Claimant an award under this head, it should be the sum for the minimum wage for the period the Court so deem fit which Learned Counsel suggests should not exceed the time the Claimant was before the Parish Court.
- [48]** In relation to the mitigation of loss, Learned Counsel contended that the Claimant did not make sufficient effort to mitigate his loss due to the gap in the timeline between the exhibited application letters and the fact that there is no evidence that the applications were in fact received by the company's they were addressed to or that the Claimant was rejected on the basis he has claimed.

[49] Respectfully, I do not agree with the submissions of Learned Counsel for the Defendant. In looking at the payslips the salary for the Claimant was consistent in 2010. The payslips from 2010 show that the Claimant's salary was increased in or around September 2010 from \$150,155.25 to \$159,164.58. The payslips show that his net pay towards the end of 2010 was \$103,773.36. I accept this evidence. The Claimant has exhibited several applications between 2012 and 2013 which show his attempts to mitigate his loss by applying for jobs. I also do not agree with Learned Counsel for the Defendant that there was no evidence that the applications were in fact received by the companies that they were sent to as the Claimant has exhibited numerous emails which in fact show that the documents were emailed to the companies and I will accept that as proof that they were sent.

[50] I am satisfied that the Claimant made attempts to mitigate his loss up to 2013. However, there is no evidence for the years following. In fact, the next application that is exhibited was for 2016. I am therefore not satisfied that the Claimant made attempts to mitigate his loss up to 2016. However, I am of the same view as the Court in Janece Greenwood. Even though the claim for loss of income was seemingly abandoned by the claimant in that case at the end of the trial, the Court stated that such charges would have a negative affect on her ability to gain employment. Likewise, the charge of Larceny given the Claimant's profession, there is no doubt that his reputation would be negatively affected and he would be viewed as a dishonest and untrustworthy person.

[51] I accept Learned Counsel for the Defendant's suggestion that any award under this head should not exceed the time the Claimant was before the Parish Court. Therefore, the Claimant ought to be compensated for loss of income from March 14, 2011, which represents the date up to which he was paid when he was terminated from JAMBISCO, to February 28, 2014, which represents the date of his acquittal. The loss of income to be awarded to the Claimant was therefore calculated as follows:

(a) March 14, 2011 to March 31, 2011 (2 weeks) \$ 51,866.68

(b) April 2011 to December 2011	\$ 933,960.24
(c) January 2012 to December 2012	\$ 1,245,280.32
(d) January 2013 to December 2013	\$ 1,245,280.32
(e) <u>January 2014 to February 28, 2014</u>	<u>\$ 207,546.72</u>
TOTAL	\$3,683,934.28

ORDERS & DISPOSITION

[52] Having regard to the forgoing, these are my Orders:

- (1) Damages are assessed in favour of the Claimant against the Defendant as follows:
 - (a) Damages for false imprisonment in the sum of **FOUR HUNDRED AND SIX THOUSAND TWO HUNDRED AND ELEVEN DOLLARS AND EIGHTEEN CENTS (\$406,211.18)** with interest at a rate of 3% per annum from January 12, 2017 to September 18, 2023.
 - (b) Damages for malicious prosecution including aggravated damages in the sum of **EIGHT MILLION DOLLARS (\$8,000,000.00)** with interest at a rate of 3% per annum from January 12, 2017 to September 18, 2023.
 - (c) Special damages in the sum of **FIVE MILLION SEVEN HUNDRED AND SEVEN THOUSAND AND SIXTY-EIGHT DOLLARS AND TWENTY-EIGHT CENTS (\$5,707,068.28)** with interest at a rate of 3% per annum from January 14, 2011 to September 18, 2023.
- (2) Costs to the Claimant, to be taxed if not agreed.
- (3) Claimant's Attorneys-at-Law to prepare, file and serve Orders made herein.