



[2015] JMSC Civ 94

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2007 HCV 4116**

<b>BETWEEN</b>	<b>WINSTON HEMANS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>ANDREW ANDERSON SPECIAL CONSTABLE</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL OF JAMAICA</b>	<b>2<sup>nd</sup> DEFENDANT</b>

**Mr. Norman Hill QC and Mr. Raymond Samuels instructed by Norman O. Samuels for the claimant.**

**Miss Cheryl-Lee Bolton instructed by the Director of State Proceedings for the 1<sup>st</sup> and 2<sup>nd</sup> defendants.**

**Heard: 20<sup>th</sup> and 21<sup>st</sup> April and 22<sup>nd</sup> May 2015**

**Malicious prosecution – Claimant charged with failing to leave the airport – Information withdrawn - False imprisonment – claimant in custody for five and a half hours – Assault – Whether accosting amounts to an assault – Loss of earnings – Unlawful user.**

**Evan Brown J**

### **Introduction and Background**

[1] On the 19<sup>th</sup> July, 2005 about noon, the claimant drove his Toyota Corolla motor car to Norman Manley International Airport (NMIA) and parked it. He was walking at the arrivals area when he was approached from behind by the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant then escorted the claimant to the police station located at the NMIA. At the police station, the claimant was arrested and charged with the offence of failing to leave

the airport. He was placed in custody. There he remained for a number of hours until he was granted bail in his own recognizance later that day.

[2] The claimant was bailed to attend the Resident Magistrate's Court for the Corporate Area on the 21<sup>st</sup> July, 2005. His case came up for trial on the 4<sup>th</sup> August and then on the 1<sup>st</sup> September, 2005. When it came up for trial on the 1<sup>st</sup> September, 2005 before His Hon. Mr. Martin Gayle, Resident Magistrate (as he then was) the Information charging the claimant was withdrawn.

[3] It was from those circumstances that the claim against the 1<sup>st</sup> and 2<sup>nd</sup> defendants arose. The claimant claimed damages for false imprisonment, assault and malicious prosecution. Having heard the claimant and the defendant, I give judgment for the claimant. My reasons for so deciding appear below.

#### **Case for the claimant**

[4] The claimant gave that evidence he was a courier for and on behalf of Air Jamaica Limited and other entities. Acting as such, he delivered documents and other items for Air Jamaica Limited to the United States Embassy and the British High Commission. He would also transport, on behalf of Air Jamaica, delayed passengers and members of their staff. Although the claimant's motor vehicle was so engaged, it was neither insured nor registered for those purposes.

[5] On the day of the incident he made two trips to the NMIA. At about 9 am he had picked up a passport at Air Jamaica's customer service department. He transported that document to the US Embassy. His second trip to the airport was to deliver the signed letter acknowledging receipt of the passport to Air Jamaica.

[6] Upon his arrival at the airport, he parked his car and left for Air Jamaica's customer service department at the arrivals area. At that time, he had in his possession four Air Jamaica envelopes. One in his hand and three in his pants pocket. The one in his hand contained the signed acknowledgement letter. Each of the other three had a cheque from Air Jamaica, bearing his name.

[7] When he was accosted by the 1<sup>st</sup> defendant, the 1<sup>st</sup> defendant took all the envelopes from him. The 1<sup>st</sup> defendant also took from him J\$200, US\$50 and CI\$20. The 1<sup>st</sup> defendant looked at the three envelopes which contained the cheques then returned them to the claimant. The 1<sup>st</sup> defendant initially kept possession of the envelope with the “documents” but returned it to the claimant when the claimant told him it belonged to Air Jamaica. The 1<sup>st</sup> defendant also kept possession of the cash. That was later returned to the claimant at the Corporate Area Resident Magistrate’s Court.

[8] The claimant was questioned about his arrangement with Air Jamaica during cross-examination. Air Jamaica would pay him per task performed. That is, each task was individually priced. To receive payment, Air Jamaica first issued the claimant with a voucher. He would tender that voucher and be issued with a cheque.

### **Case for the defendants**

[9] The 1<sup>st</sup> defendant, a Corporal in the JCF but a Special Constable at the time of the incident, was on special duties at the NMIA. Among his duties was the interdiction of illegal taxi operators. The 1<sup>st</sup> defendant said in his witness statement that at about 12.51pm he observed the claimant at the arrival West Terminal area. He described the claimant as being clad in blue jeans and a shirt.

[10] The claimant, the 1<sup>st</sup> defendant said, was illegally soliciting passengers. By illegally soliciting passengers, he said he meant that the claimant was loading the vehicle and collecting money. Consequently, he told the claimant of the offence of soliciting passengers without a licence and ordered him to leave the airport. Upon being so ordered, the claimant walked away.

[11] Later that day, the 1<sup>st</sup> defendant again saw the claimant illegally soliciting passengers at the airport. It was at that time that he arrested and charged the claimant for the offence of failing to leave the airport. His search of the claimant revealed money that the claimant told him was collected from soliciting passengers. The 1<sup>st</sup> defendant

asserted that at the time of making the arrest he was acting as a police officer without any malice or prejudice.

### **Issue for determination**

[12] The sole issue for my determination is whether the 1<sup>st</sup> defendant had reasonable or probable cause to have arrested and charged the claimant.

### **Applicable law**

#### **Malicious Prosecution**

[13] Since the claims for assault and false imprisonment flow from the institution of the prosecution, it is convenient to treat with the latter first. For the claimant to succeed in his claim for malicious prosecution, he must establish, on a balance of probabilities, the following four ingredients:

- (a) that the law was set in motion against him on a charge of a criminal offence;
- (b) that he was either acquitted or that it was otherwise determined in his favour;
- (c) that the 1<sup>st</sup> defendant set the law in motion without reasonable and probable cause; and
- (d) that in setting the law in motion the 1<sup>st</sup> defendant was actuated by malice

(See ***Wills v Voisin*** (1963) 6 WIR 50, 57)

[14] In respect of ingredients (c) and (d), I bear in mind the gloss of the local court of appeal in ***Peter Flemming v Det. Cpl. Myers and The Attorney-General*** (1989) 26 JLR 525 (***Flemming v Myers***). At page 535 Forte JA said:

*“In the case of ***Glinski v McIver*** [1962] W.L.R. 856, Lord Delvin in his speech affirmed that at common law in order to succeed in an action for malicious prosecution: “the plaintiff must prove both that the defendant was actuated by malice and that he had no reasonable and probable cause for prosecuting.” However, by virtue of section 33 of the Constabulary Force Act (supra) in Jamaica, a plaintiff suing a police officer for malicious prosecution as a result of an act done in the execution of his duty is required to prove that the defendant acted either maliciously or without reasonable and probable cause.”*

## **Findings and analysis**

[15] Both sides were agreed that it was the 1<sup>st</sup> defendant who set the law in motion against the claimant, acting as he was, on his own volition. Eventually, there was no contest that the 1<sup>st</sup> defendant charged the claimant for a criminal offence. The first ingredient is therefore well made out.

[16] I now turn my attention to the second ingredient, was the charged determined in the claimant's favour? The claimant averred in his particulars of claim that the charged was dismissed without him being called upon to state his defence. That averment conveys the impression that a trial took place which ended either mid-stream or at the end of the case for the prosecution. However, no such evidence was led before me.

[17] What was proved, was that the information charging the claimant with the offence was withdrawn. The Number 1 Information containing the record of the proceedings was admitted into evidence. The complete endorsement on the record is "information withdrawn". It is therefore clear that there was no determination upon the merits of the case. No trial took place.

[18] That no trial took place however is only a moot point. For whatever reason, the crown decided not to proceed with the charge against the claimant. Technically, an Information that has been withdrawn, has within it, the seeds of germination since it was not a disposal on the merits. However, as the learned authors of ***Clerk & Lindsell on Torts*** 19<sup>th</sup> ed. paragraph 16-19 have said, what is important is that proceedings appear to have been brought to a "legal end". More importantly, "the end need not be a final and conclusive one. So, it is enough if the proceedings have been abandoned without being brought to a formal end" (See ***Clerk & Lindsell*** op.cit.). After the passage of almost ten years the proceedings can be deemed abandoned. Therefore, I incline to the view that the withdrawal of the Information was a determination in favour of the claimant.

[19] That takes me to a discussion of the third ingredient. Did the 1<sup>st</sup> defendant have reasonable or probable cause when he arrested and charge the claimant for failing to

leave the airport? The case for the claimant, was that he was intercepted at the arrival area as he went about his lawful business and, without rhyme or reason ordered to the police station where he was arrested and charged. If that is accepted, the 1<sup>st</sup> defendant would have acted without reasonable or probable cause. Was it as the claimant alleged?

[20] In his witness statement the claimant said when the first defendant demanded that he accompany him to the police station, he asked the 1<sup>st</sup> defendant the reason for doing so. To that inquiry, the 1<sup>st</sup> defendant “maintained his stance” that the claimant should accompany him to the police station. I understood the claimant to be saying by the use of the quoted words that the 1<sup>st</sup> defendant gave him no reason for his demand but insisted that he accompany him to the police station.

[21] However, when the claimant was cross-examined he said the 1<sup>st</sup> defendant gave him a reason in response to his inquiry. The 1<sup>st</sup> defendant told him that there was a matter he was querying. When his attention was drawn to his witness statement, he insisted that that was exactly what the 1<sup>st</sup> defendant said. So then, this was clearly an inconsistency in the claimant’s evidence. The question is, how should it be treated?

[22] I do not find it to be a material inconsistency. I do not find it a material inconsistency for the simple reason that it makes no difference to the defendants’ answer to the claim. It makes no difference because the 1<sup>st</sup> defendant at no time said he gave the claimant any reason for asking the claimant to accompany him to the police station. In fact, the 1<sup>st</sup> defendant denied the specific response attributed to him by the claimant. On the contrary, the 1<sup>st</sup> defendant admitted under cross-examination that he made no inquiries of the claimant before he arrested him.

[23] The 1<sup>st</sup> defendant’s explanation for that was that he had seen the claimant committing an offence. As I understood the 1<sup>st</sup> defendant, there was no need to make any inquiries of the claimant at the time of arresting him because he had seen and spoken to the claimant earlier. And since there was no need to make any inquiries, there was equally no need to advise the claimant of the reason for going to the police

station. I find that the 1<sup>st</sup> defendant did not give the claimant a reason for his request to accompany him to the police station.

[24] The 1<sup>st</sup> defendant's justification for arresting the claimant without inquiries is the very substratum of the case. When the 1<sup>st</sup> defendant said he saw the claimant committing an offence, the offence I understood him to mean was failing to leave the airport. The gravamen of that offence lies in remaining at the airport after having been observed committing a prohibited act and warned to leave. To assert that someone has failed to leave the airport the officer must be sure of the identity of the person to whom he first spoke.

[25] The question becomes, was it the claimant the person to whom the 1<sup>st</sup> defendant spoke earlier that day? The claimant did not admit that the 1<sup>st</sup> defendant spoke to him earlier that day. On the other hand, the 1<sup>st</sup> defendant was unswerving in his evidence that he spoke to the claimant twice that day. Did he make a mistake? In his witness statement the 1<sup>st</sup> defendant described the person he told to leave the airport as a man dressed in blue jeans and shirt. However, in the entry made by the 1<sup>st</sup> defendant in station diary (exhibit 1), the 1<sup>st</sup> defendant described the claimant as a man dressed in black pants and blue shirt.

[26] The contention of the defence is that the wrong person was arrested by the 1<sup>st</sup> defendant. The defence has therefore placed the correctness of the identification of the claimant in issue. The incidents giving rise to the charge of failing to leave the airport took place in broad daylight. Using the time given in his witness statement, approximately 18 minutes elapsed between when the 1<sup>st</sup> defendant saw the claimant and ordered him to leave the airport and when the entry was made in the station diary. If the reference is the time of arrest, 12.40 pm, given in both exhibit one and exhibit two, the prisoner charge and property book, the lag is about 29 minutes.

[27] Was that 18 – 29 minutes a sufficiently long enough time for the 1<sup>st</sup> defendant to have forgotten the face of the person whom he had seen committing the unlawful act and was ordered to leave the airport? In seeking to answer this question I bear in mind

that these were total strangers. That has to be balanced against the assertion that this was not a fleeting glance situation, if the 1<sup>st</sup> defendant is to be believed. While the evidence didn't go so far as to say how long the 1<sup>st</sup> defendant had the claimant under observation on each occasion, the initial activity described along with the officer escorting the claimant to the bus stop must have occurred over at least a minute.

[28] That the 1<sup>st</sup> defendant may have made a mistake in arresting the claimant was never suggested to him. However, it was always implicit in the case for the claimant that the 1<sup>st</sup> defendant had the wrong man. The difference in the description of the clothing appeared to be Queen's Counsel's way of highlighting the point. In response learned counsel for the defendants asked me to treat it as an immaterial inconsistency. She submitted that the difference in description is attributable to the impact the passage of time had on the 1<sup>st</sup> defendant's recollection, since his statement was written almost ten years later.

[29] But that was learned counsel's explanation. As plausible as it sounds, I can only have regard to it if it came from the witness. The 1<sup>st</sup> defendant was never asked to explain the difference in the description of the clothing. The fact that there was no explanation assumes some importance in the context of the claimant saying the 1<sup>st</sup> defendant approached him once and that was when he was about his lawful business. I must therefore give some weight to it.

[30] All of this raises the question of the reliability of the 1<sup>st</sup> defendant. The first question is when was it that the 1<sup>st</sup> defendant first saw the claimant at the airport that day? Under cross-examination he said it was earlier that morning. If that was where the matter ended there would have been no difficulty as the claimant said he first went to the airport at about 9 am. On this point the 1<sup>st</sup> defendant was woefully inconsistent. He recorded 12.51 pm in his witness statement but recorded 12.40 pm in the station diary as the time he first saw the claimant.

[31] Of the three times given by the 1<sup>st</sup> defendant, 12.40 pm is to be preferred as the correct time. It is to be preferred as it was the time that appeared in the 1<sup>st</sup> defendant's



contemporaneous record of the incident. The time of 12.51 pm was recorded in his statement which, as was observed earlier, was written almost ten years after the event and is less reliable. Even more unreliable was the 1<sup>st</sup> defendant's oral assertion during cross-examination that he first spoke with the claimant earlier in the morning. The latter times were adjudged unreliable not only for their greater temporal remove, but also the 1<sup>st</sup> defendant's less than impressive powers of recall.

[32] Another indicia which gives me cause for pause is the response of the person the 1<sup>st</sup> defendant spoke to. Whereas in his witness statement the person who was warned walked away, in the station diary that person was escorted to the bus stop. This remained an unexplained inconsistency in the evidence of the defence. In addition to being an unexplained inconsistency, either version imbued the case for the defendant with an amount of incongruity.

[33] This is the incongruity, neither account made any reference to the claimant's car, which he admittedly had at the airport. It strains the limits of the imagination to accept that the claimant would have walked with the 1<sup>st</sup> defendant to the bus stop without once mentioning that he had his own mode of transportation to leave the airport. And if it was that the claimant walked away, was it towards the car park? The suggestion behind both versions is that the claimant was a pedestrian. I do not go as far as learned Queen's Counsel to say the picture the 1<sup>st</sup> defendant painted of the claimant was that of an unemployed vagrant.

[34] Whether or not the claimant was an unemployed person or someone engaged by Air Jamaica becomes an academic question in light of the other evidence I have accepted. I accept that the claimant first went to the airport at about 9 am that day. Additionally, I accept that the claimant was taken to the police station sometime after 12 noon, as the claimant said in his witness statement. That time is also implicit in what the 1<sup>st</sup> defendant said. Therefore, I accept that there was but one interaction between the claimant and the 1<sup>st</sup> defendant.

[35] That one interaction was when the 1<sup>st</sup> defendant asked the claimant to accompany him to the police station. Since there was only one interaction, the first defendant made a mistake in thinking the claimant was the person he had spoken to earlier. The difference in the description of the clothing and the incongruity mentioned above all confirm this. Since he made that mistake, the claimant was not the person he saw illegally soliciting passengers. Therefore, the 1<sup>st</sup> defendant did not see the claimant committing an offence which would have given him a reasonable or probable cause to arrest and charge him later that day.

[36] This is what I accept. The 1<sup>st</sup> defendant saw the claimant walking at the arrival area and accosted him mistaking the claimant for someone he had earlier seen illegally soliciting passengers. I do not accept that on this occasion the 1<sup>st</sup> defendant observed any activity of illegal solicitation. The 1<sup>st</sup> defendant did not say anything to the claimant, aside from asking the claimant to accompany him to the police station, although the claimant required of him a reason. He thereby robbed himself of the opportunity to confirm his earlier observations and ground his actions in law. The 1<sup>st</sup> defendant was therefore not in a position to know if the claimant was the person he had ordered to leave the airport on account of the illegal activity he observed.

[37] And that really is the question for me. That is, whether or not the claimant was committing an offence for which he could have been lawfully prosecuted? The NMIA is a public place to which all members of the public have unhindered access within the law. Therefore the claimant's gratuitous explanation for being at the airport is mere surplusage. Even if the purported contract employment to Air Jamaica was an elaborate scheme to avoid prosecution, and I'm not saying that it was, the defendants have not discharged the evidential burden to show that reasonable or probable cause existed to prosecute the claimant.

[38] There is a further inevitable consequence of the fact that the 1<sup>st</sup> defendant made a mistake in arresting the claimant. It is this, what learned counsel for the defendants described as "recantations and I did not say that" in the evidence of the

claimant become immaterial. Those were issues such as whether or not the claimant had three or four envelopes in his pocket or where his motor vehicle was parked.

[39] The ultimate inevitability is that I find that when the 1<sup>st</sup> defendant set the law in motion in arresting and charging the claimant, he did so without reasonable or probable cause: *Wills v Voisin*, *supra*. Upon the authority of *Flemming v Myers*, *supra*, there is no need for me to go on to consider the element of malice. I will now turn my attention briefly to the claim for false imprisonment.

### **False Imprisonment**

[40] That the claimant was held in custody after his arrest and charge was not denied. Having found that his arrest and charge was unlawful, it follows that any detention flowing from that unlawful conduct must itself be unlawful. In his witness statement the claimant said his liberty was restrained for the space of upwards of five hours. However, under cross-examination he said he was in the cell for about three and a half hours. In any event, I find that the claimant's liberty was restrained from 12.40 pm to when he was released on bond at 6 pm. That is, he was falsely imprisoned for approximately 5 1/2 hours.

[41] I have commenced the period of the imprisonment from 12.40 pm for two reasons. The first is factual. I found as a fact that it was at that time that the 1<sup>st</sup> defendant arrested the claimant. Following on that is the second reason, the use of the 1<sup>st</sup> defendant's authority. That authority was used to compel the claimant to accompany the 1<sup>st</sup> defendant to the police station even though no physical force was used. That was sufficient to commit the tort: *Commonwealth Caribbean Tort Law* 3<sup>rd</sup> ed. page 19.

[42] As Coke CJ said, "every restraint of the liberty of a free man is an imprisonment, although he be not within the walls of a common prison." In sum, as was said in *Bird v Jones* (1845) 115 ER 668, 669, "every restraint of the liberty of a free man will be an imprisonment." That is sufficient to dispose of the question of false imprisonment.

## **Assault**

[43] Leaving aside the question of false imprisonment, I look now at the claim for assault. I find myself in agreement with learned counsel for the defendants that there is no evidence to support this part of the claim. Learned Queen's Counsel gave a lukewarm concession to that submission. He submitted that ***Gary Hemans v The Attorney-General of Jamaica*** [2013] JMSC Civ. 75 (***Gary Hemans v The A-G***) suggests the initial accosting of the accused could amount to an assault.

[44] In my perusal of ***Gary Hemans v The A-G***, that suggestion did not reveal itself. There was in fact an actual assault or a battery in that case. Therefore, any opinion containing the kernel of the suggestion contended for, would at best have been obiter. The classic definition of an assault is a direct threat made by the defendant to the claimant which puts the claimant in reasonable fear or apprehension of immediate physical contact. It is to be noted however, that an assault includes a battery, that is, any hostile contact with the person of another without that person's consent: ***Fagan v Metropolitan Police Commissioner*** [1968] 3 All ER 442, 445. In ***Tuberville v Savage*** (1669) 86 ER 684 striking at another but missing the target with the intention to assault was held to be an assault, as also holding up the hand against the person in a threatening manner.

[45] So, if for example the 1<sup>st</sup> defendant had approached the claimant in a threatening or menacing manner that would have been an assault. The mere accosting of the claimant falls outside of the penumbra of such conduct. The lexical meaning of accost is, to approach, stop and speak to. That can be accomplished without being done in a menacing manner. In fact, there was no complaint that that was the character of the 1<sup>st</sup> defendant's approach. Neither was there any evidence of any touching.

## **Assessment of Damages**

### **False imprisonment**

[46] In respect of the claim for false imprisonment several authorities were cited by both sides. I have considered them and observed that the awards tend to be conservative. That is unsurprising as the approach is akin to that for personal injuries.

Of all the cases cited I found two most instructive. The first of them is ***Maxwell Russell v The Attorney-General of Jamaica and Corporal McDonald*** 2006 HCV 4024 delivered 18<sup>th</sup> January, 2008 (***Maxwell Russell v The A-G***). In that case, Mangatal J adopted the approach of Lord Woolf in ***Thompson v Commissioner of Police of the Metropolis*** [1998] Q.B. 298 (***Thompson v Comsr. of Police***).

[47] In laying down guidelines for the jury in ***Thompson v Comsr. of Police***, it was said that damages in a straightforward case of wrongful arrest and imprisonment should be awarded on a sliding scale. The rationale given for that was concordance with awards for personal injury and the entitlement of the claimant to a higher award for the initial shock of being arrested. So, a base figure is awarded for the first hour of deprivation of liberty and thereafter lower additional sums are awarded for additional hours. The same is true for days of imprisonment. The first day is the base day and the sliding scale is thereafter applied.

[48] In the case of malicious prosecution, an initial figure is awarded then the length of the trial is taken into account. Where there was a conviction which was overturned on appeal, a greater sum is awarded to reflect the period during which the claimant had been in peril and caused distress. Although Lord Woolf provided figures for the jury's guidance, there was the recognition, at page 516:

*“that circumstances may vary dramatically from case to case and that these and the subsequent figures which we provide are not intended to be applied in a mechanistic manner.”*

In addition to the above, the learned judge also gave consideration to the circumstances of damage to the claimant's reputation.

[49] It is an approach which commends itself to me and judicial comity demands that I follow it. As in ***Maxwell Russell v The A-G*** the claimant gave no evidence of the impact of the arrest on his standing in the community. However, he said:

*“as a result of what happened I felt ashamed, humiliated and distressed on having been arrested and charged, and having to go to court and be*

*prosecuted, I felt even further shame and humiliation. I was still affected by the whole situation.”*

At the time of the incident he was a courier, carrying on business in his own account. Air Jamaica seemed to have been his only or major client. He did not say if his arrest and incarceration had any effect on that relationship.

[50] Taking all those relevant factors into consideration, for the first hour I make an award of \$45,000.00. For the remaining four and a half hours I award an additional sum of \$100,000.00 on a sliding scale as was done in ***Maxwell Russell v The A-G***, following ***Thompson v Comsr. of Police***. Adopting that approach, the award is consistent with the updated award made in ***Egan Allen v Jamaica Public Service Company Limited and Christopher Coke*** 2006 HCV 0566 delivered on the 10<sup>th</sup> April, 2008, the second case I found instructive. In that case the claimant was a businessman and grocer who was incarcerated for 5 hours. The \$75,000.00 awarded to him updates to \$133,834.13.

### **Malicious Prosecution**

[51] In respect of the award for malicious prosecution, the claimant was charged with a non-finger printable summary offence. The prosecution lasted just under two months; that is from the 19<sup>th</sup> July to the 1<sup>st</sup> September, 2005. During this time the claimant attended court a total of three times. For that the claimant's counsel submitted that an award of \$500,000.00 would be appropriate. He relied on ***Robert Salmon v Senior Superintendent Elan Powell and the Attorney-General of Jamaica*** [2012] JMSC Civ. 15 (***Salmon v The A-G***).

[52] In ***Salmon v The A-G***, the prosecution lasted for seven months. The updated award made to that claimant is \$617,581.80. The learned judge took into consideration that the claimant had been charged with a minor offence and that he was a police officer. The learned judge also found some guidance in ***Maxwell Russell v The A-G***, *supra*, for the length of time the prosecution lasted.

[53] Learned counsel for the defendants relied on ***Maxwell Russell v The A-G***. The updated award in that case is \$466,289.78. The prosecution lasted for about one year

and involved an indictable offence which exposed that claimant to a more serious penalty and a recorded conviction. Defence counsel highlighted the distinguishing features and submitted that an appropriate award should be \$77,715.00.

[54] In the instant case, the claimant's social circumstances are alike those of the claimant in *Maxwell Russell v The A-G* and his feelings of indignity, humiliation and embarrassment are to be assessed from that baseline. In my opinion, in all the circumstances, both the subjective and the objective, an award of \$80,000.00 is reasonable compensation.

### **Special Damages**

[55] The claimant claimed \$150,000.00 under this head for loss of earnings. The award was resisted on two bases. First, no proof was annexed to the particulars of claim as required by r.8.9 (3) of the CPR. Secondly, the income would have been as a result of an unlawful use of the motor vehicle. Having regard to the informal nature of the claimant's employment no compliance with r.8.9 (3) of the CPR could reasonably be required. However, I agree with the second submission. Accordingly, I make no award under this head.

### **Aggravated/Exemplary damages**

[56] Learned Queen's Counsel submitted that an award be made for exemplary damages as the conduct of the 1<sup>st</sup> defendant fell within the category of oppressive, arbitrary or unconstitutional conduct. For that submission learned Queen's Counsel relied on the classic case of *Rookes v Barnard* [1964] A.C. 1129. Learned counsel for the defence submitted that the conduct of the 1<sup>st</sup> defendant cannot be so described and that basic damages should be sufficient.

[57] Neither aggravated nor exemplary damages was pleaded. However, I found no evidence to support either. The evidence upon which the claimant relied for this I did not find proved. That is, the claimant submitted that the 1<sup>st</sup> defendant refused to release the claimant despite orders of the Superintendent of Police to the contrary. Nothing else in their subsequent interaction commended itself to me as offensive. That left the manner

in which the 1<sup>st</sup> defendant approached the claimant. And in that, the 1<sup>st</sup> defendant could not be described as anything less than courteous.

[58] There was therefore nothing in the circumstances of the arrest of the claimant, whether at the arrival area or at the police station, that suggested that the 1<sup>st</sup> defendant behaved in a high handed, insulting, malicious or oppressive manner. In short, there was no conduct requiring an element of punishment. Therefore there was no warrant to go beyond the normal compensatory awards.

### **Orders**

- [59] (i) False Imprisonment \$145,000.00
- (ii) Malicious Prosecution \$80,000.00
- (iii) Costs to the claimant to be agreed or taxed.