Sup. Ct. — Malicious prosecution — false imprisonment — Damages — Assessment — Attorney of Law arrested for ganja — Quantum — Plaintiff re-arrested although bailed — award of aggravated damages.

Case referred to
The Albazero (1977) A.C. 744

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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. H.221/1985

Remedies

BETWEEN	COLIN S. HENRY	PLAINTIFF
AND	THE ATTORNEY GENERAL OF JAMAICA	
AND	ASSISTANT SUPERINTENDENT T.K. WHYTE	
AND	DETECTIVE CONSTABLE ESMOND BROWN	DEFENDANTS

Winston Spaulding Q.C., Norman Wright and Sonia Mitchell instructed by Peter Goldson of Myers, Fletcher & Gordon for the Plaintiff.

Douglas Leys and Frank Williams instructed by The Director of State Proceedings for the Defendants.

Heard: November 7 and 8, 1991; December 7,9,10 and 11, 1992; January 7, and May 17, 1993

PANTON J.

The plaintiff is seeking damages for malicious prosecution and false imprisonment arising out of an incident which occurred along the Ewarton to Linstead main road in the parish of Saint Catherine on the 26th July, 1985. The statement of claim indicates that the plaintiff was arrested and charged in connection with a small quantity of ganja in a pouch in his car.

On the 28th August, 1985, the learned Resident Magistrate for the parish of Saint Catherine dismissed the charge without calling on the plaintiff to state his defence.

The plaintiff claims that the actions of the defendants have caused his reputation to suffer and that he has been damaged professionally and otherwise. The injury that he has suffered includes, he alleges emotional and physical injury to his health, damage to his reputation in the eyes of well-thinking people, and loss of business and earnings in the United States of America and in Jamaica, particularly as an attorney-at-law.

He is seeking special damages amounting to $6,100.00 and general as well as aggravated damages.

A defence was filed. That however is no longer a material consideration as the defence consented to judgment being entered in the plaintiff's favour. As a result of the entry of that judgment, the matter came before me for the damages to be assessed.

In order to assess the daamages to which the plaintiff is entitled, it is necessary to ascertain the factual base on which he relies. It is surprising that although there has been agreement between the plaintiff and the defence as to the entry of jdugment in the plaintiff's favour, there has been no agrement between them as to the facts which gave rise to the malicious prosecution and false imprisonment. The defence called two witnesses and their evidence and behaviour clearly indicated a wish to resile from the judgment. That, too, surprised me.

The evidence of the plaintiff was in sharp conflict with that of the two defendants who testified. The conflict was in relation to important areas of the case. The defendants even contradicted themselves. Their evidence was in conflict between them as also with the evidence they had given before the learned Resident Magistrate who had dismissed the plaintiff without calling on him to state his defence. At the hearing before me, the second defendant went so far as to say that the plaintiff had tried to induce him, apparently corruptly, not to prefer charges against him. This was the first time that this accusation was being made. It appeared to have been 'news' to the attorney-at-law for the defence.

I regard the plaintiff's evidence as the only reliable account on which I can base the award. He spoke of being ordered out of his car by a policeman in plain clothes, and of being accused of drug smuggling. The third defendant removed a silver tyre pressure gauge from the pocket of the car and opined that it was a chalice. Up to this point, it may be said that apart from their slanderous expressions, the police were merely making a nuisance of themselves. The situation changed when they saw and opened the two pouches that were on the back seat of the car. A parcel containing ganja was found in the pouch which belonged to the plaintiff's companion who was, incidentally, his nephew. When the police asked them what it was, no one answered; there was a similar lack of response when they were asked whose it was. At this point, the second defendant gave instructions for both men to be arrested. The plaintiff identified himself, his car keys were taken and along with his nephew he was placed in a jeep and taken to the Linstead Police Station.

At the station they were kept in a cage for approximately an hour. The third defendant arrived at the station with the offending pouch and parcel. He inquired as to whose pouch it was, wereupon the plaintiff's nephew said it was his, and the plaintiff said it did not belong to him the plaintiff. Notwithstanding the admission by the plaintiff's nephew, the third defendant proceeded to arrest both men. He allowed them bail and advised them of the date for attendance at Court.

The plaintiff resumed his journey to Kingston. As fate would have it, he came upon the said policemen (excluding the third defendant) at another road block. The procedure of ordering him out of his car was repeated. He complied. The second defendant inquired of him as to who had bailed them. When he was told that the plaintiff and his nephew had been given their own bail, he took the bonds from them and gave them to another policeman. The plaintiff and his nephew were re-arrested and eventually replaced in the cage at the Linstead Police Station. They were eventually bailed by a surety after spending another hour and a half in custody.

The plaintiff's arrest was broadcast on the radio and carried in the Star newspaper. It was necessary for him to explain the circumstances to the executive body and the staff of the Private Sector Organization of Jamaica, which had employed him as its Executive Director. His explanation was accepted at first but later he noticed a marked difference in his relationship with the Executive particularly the Chairman who had recruited him. The only matter that could have caused this change was the arrest. The plaintiff resigned in 1986 although his contract, which commenced in March, 1985, had another year to run, with an option to renew it. His resignation was accepted without protest.

The incident caused the plaintiff to suffer lack of confidence in himself. He lost his appetite for food, suffered from insomnia and consequently, it would seem, lost body weight. He was examined by a psychiatrist, Dr. Aggrey Irons, who had known him since school days. Dr. Irons found him very anxious, particularly in the area of the sense of shame. There was, he found, a severe loss of self-esteem and a condition he described as phobic avoidance. The passage of time has resulted in only marginal imoprovement to the plaintiff's feelings of anxiety brought about by the incident. Up to the date of Dr. Irons evidence, the plaintiff had not availed himself of the full extent of the necessary treatment so there are still areas of problems in the view of Dr. Irons. Therapeutic intervention is necessary. It would involve psychiatric

treatment as well as the re-learning of experiences. Dr. Irons estimates the cost of such treatment to be about $38,000.00 over the next three to four years.

I accept the plaintiff's evidence as to his feelings of humiliation and embarrassment. I accept also the evidence that the incident damages his reputation with his employers. Avis Henriques, who was in 1985 the immediate past president of the Private Sector Organization of Jamaica, gave evidence as to the change of atmosphere after the incident. She spoke particularly of the 'coldness from some people on the Executive'. She said that if she had been in the plaintiff's position, she would have been embarrassed. Mrs. Henriques' evidence impressed me as being an honest description of the situation as she viewed it.

I cannot say the same of the evidence of Ronald Davidson and Peter Thwaites. Their thinking on the matter did not qualify them, in my view, to be regarded as "right thinking" men in the society. I cannot take their evidence seriously. Davidson said that on learning of the incident involving the plaintiff he lost his regard for the plaintiff and concluded that he is a corrupt man. Indeed, in answer to me the witness said that he tried and found the plaintiff guilty without any evidence. To him, the acquittal by the learned Resident Magistrate means nothing. The evidence of Thwaites, who was then a member of the Executive Committee of the PSOJ, is no better on the point. Notwithstanding the plaintiff's acquittal, Thwaites still has lingering doubts as to 'what exactly happened'. To him, the most dominant factor is that the plaintiff was arrested. The fact that ganja was found in the car does not in his view qualify as the dominant factor. The arrest takes pride of place in his mind. Right thinking men would in my view give serious consideration not merely to the arrest but to the fact that the plaintiff was acquitted without being called on to state his defence.

That there was damage to the plaintiff's reputation cannot be doubted. He was damaged particularly at the workplace. It has to be noted that since the incident, the plaintiff has recovered some ground socially in that he has been elected President of the Jamaica-German Society. In addition, he became a radio talk show host, and was admitted to practise as an attorney-at-law in this country. The damage therefore was not long lasting in this respect. It is the damage to his health that has been the lasting feature of the harm done to him. Dr. Iron's evidence is clear. I accept it. I take these matters into consideration in arriving at what I regard as an appropriate sum for compensation.

An award of damages is aimed at compensating an injured party by way of money. The object is "to put the person whose right has been invaded in the same position as if it had been respected so far as the award of a sum of money can do so" -- Lord Diplock in The Albazero (1977) A.C. 744 at 841.

In the instant case, the plaintiff has not shown that he has suffered any loss of income. As said earlier, he has satisfied me that he has suffered in relation to his health. I have to consider also the period of incarceration, the embarrassment and humiliation as well as the clearly outrageous conduct of the Superintendent of Police.

In making my assessment of the appropriate sum, I have given careful consideration to the cases cited by the attorneys-at-law. The submissions made by the defence smack of ridicule. They give the impression that the defence thinks very little of the value of personal freedom. How could they have submitted that nominal damages would be in order for the wrong done to the plaintiff? That was, and is, most unfortunate.

In imprisoning the plaintiff a second time while he was in possession of bail bonds, the defendant Whyte acted in a manner which attracts aggravated damages. The bonds were the plaintiff's passport to freedom. Even if a person of the rank of constable was unaware of the legal effect and meaning of such documents, surely the Superintendent of Police cannot plead such ignorance. He has not offered a satisfactory explanation for taking away the bonds and cancelling their effect. His behaviour can only be explained as calculated to further embarrass, humiliate, and insult the plaintiff. Such behaviour was outrageous and malicious. The Superintendent's disrespect for the bail bonds was merely a symbol of his disrespect for the plaintiff and his legal rights. At the trial before me, he offered no apology. To the very end, instead of mitigating, he was aggravating.

The first arrest and the malicious prosecution of the plaintiff merit an award of $150.000.00. The second arrest, in which the third defendant did not participate, requires, in my view, separate consideration. This is also the particular feature of the case that attracts aggravated damages. In that respect, an amount of $200,000.00 is awarded. The sum of $38,000.00 is also allowed for future medical treatment and forms part of the general damages. There was no dispute so far as the special damages was concerned.

In summary, the award is as follows:-

Special Damages	-	$6,100.00 plus interest at the rate of 5% per annum from the 26th July, 1985, to 17th May, 1993.
General Damages	-	$388,000.00 plus interest at the rate of 5% per annum on the sum of $350,000.00 from the date of the service of the writ to the 17th May, 1993.

The cost of these proceedings are to be borne by the defendants, and are to be agreed or taxed.