

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. F 1999/D 102

BETWEEN	WILBERT JOHNSON	CLAIMANT
A N D	SAMUEL ELLIS	1 ST DEFENDANT
A N D	THE ATTORNEY GENERAL	2 ND DEFENDANT

Maurice Saunders for the Claimant

Miss Candice Rochester instructed by the Director of State Proceedings for the Defendants

DUKHARAN, J

Heard: 17th November 2005 and 23rd March 2006

This is an action brought by the Claimant to recover damages for Assault and Battery, False Imprisonment and Malicious Prosecution against the 1st Defendant, being a servant and/or agent of the 2nd Defendant. The 2nd Defendant is being sued by virtue of the Crown Proceedings Act.

The Claimant is contending that on the 27th June 1995, he was unlawfully and/or without reasonable and probable cause taken into custody by the 1st Defendant, a Constable in the Jamaica Constabulary Force to the Wait-a-Bit Police Station in Trelawny. He was detained for two days until he was taken to the Ulster Spring Resident Magistrate's Court on a charge of Obtaining Goods by False Pretences. He was subsequently acquitted of the charges.

The Claimant is further contending that the 1st Defendant assaulted him by threatening to him with a baton. He was further assaulted by another officer who hit him with a broom as he was being placed in a cell. As a result of all this the Claimant said he suffered pain, severe inconvenience loss and damage.

The Defence is a denial of the allegations by the Claimant. In essence the 1st Defendant is saying that he received reports from one Miss Babs Smith and Verol Adlam that the Claimant obtained 80lbs of yam heads on credit from Mr. Adlam by perpetrating a fraud. It is on that basis he was detained, arrested and charged. The Defendants deny that the 1st Defendant acted maliciously or without reasonable and probable cause when he arrested and charged the Claimant. There is also a denial that he was assaulted and beaten while in custody.

Against this background the main issues to be determined by the Court are;

- (1) Whether the 1st Defendant while acting as the servant and/or agent of the Crown maliciously or without reasonable and probable cause falsely imprisoned the Claimant.
- (2) Whether the 1st Defendant maliciously or without reasonable and probable cause prosecuted the Claimant for the offence of Obtaining Goods by False Pretences.
- (3) Whether the 1st Defendant maliciously or without reasonable and probable cause assaulted the Claimant.

The Claimant gave evidence which is contained in a witness statement (exhibited). He said that in November 1994 he was painting Miss Babs Smith house where he sought to purchase one cwt. of yam heads from her farm. She told him he could

have ½ cwt. for \$500.00 at a later date. In February 1995 he spoke to Verol Adlam the farm supervisor for Miss Smith where he collected the Yam heads at a price of \$500.00. He said he confirmed the purchase with Miss Smith and the following day he collected the yam heads. He paid \$50.00 to Mr. Adlam as he could not find the balance and sought an extension from Miss Smith which he said was granted. He said at one time he made a suggestion to Miss Smith to return the yam heads as he was having some financial difficulty. This suggestion was refused.

He further said that after hearing the police was looking for him he went to the Wait-a-Bit Police Station where he explained to an officer of the agreement he had with Miss Smith and Mr. Adlam. He said that on the 27th June, 1995 Detective Ellis came to his home and questioned him about the money owing to Miss Smith. He said he told Detective Ellis he did not have the money at the time. He was taken in a police jeep to the Wait-a-Bit Police Station and left sitting in the station for quite some time. He said when he got up to leave he was manhandled and threatened with a baton by Detective Ellis. He said he was locked up and while entering the cell he was hit with a broom by a police officer named Sewell. He said he was locked up in a cell for two days with other prisoners which was poorly ventilated and with the stench of urine. He was taken to the Clarks Town Resident Magistrate's Court two days later. He said also that during his incarceration he was assaulted by other prisoners.

In cross examination he said there was an agreement to pay for the yam heads within four weeks. He said it was not true that he was cautioned by the police for obtaining goods by false pretences. He said he was never offered bail and only when he was taken to Court he was offered bail.

The 1st Defendant, Det. Cpl. Samuel Ellis told the Court that he received a report from Babs Smith of an alleged case of obtaining goods (yam heads) under false pretences committed by the Claimant. He said he approached the Claimant and informed him of the report. The Claimant admitted to receiving the 80lbs of yam and agreed to pay Mr. Adlam by the end of May 1995. He said that on the 27th June, 1995 Mr. Adlam made a report to him that the \$500.00 due and owing to Miss Smith was still outstanding. It was on that basis the Claimant was charged for obtaining property by false pretenses. He was placed in custody and brought before the court two days later.

Cpl. Ellis denied threatening or assaulting the Claimant nor did he see anyone hit or threaten the Claimant.

In cross examination he said he offered station bail to the claimant. He agreed that from information there was an arrangement for him to pay \$500.00 for the yams which was due and owing. It was suggested to him that he was putting pressure on the Claimant to pay the money and that was the reason why he arrested him. This he denied. He also said that Miss Babs Smith told him that if the Claimant paid the outstanding sum she would not proceed any further with the matter.

Miss Babs Smith told the Court that she had an arrangement with the Claimant for him to pay \$500.00 for the yam heads. She said she told Cpl. Ellis about this arrangement and that she would not proceed if the matter of the outstanding sum was paid.

Mr. Saunders for the Claimant submitted that the Court should accept the Claimant as a truthful witness. He said that the 1st Defendant had information which showed that there was no *mens rea* and that no crime was committed. He said he was

acting outside of the law when he deprived the Claimant of his liberty. He further submitted that the 1st Defendant had an improper motive and that was to lock him up to teach him a lesson and for him to pay a debt. He said there could be no honest belief on the part of the 1st Defendant that a criminal act was committed based on the facts he had.

Miss Rochester for the Defendants submitted that there were inconsistencies in the Claimant's evidence. She said that based on the report that the 1st Defendant received he had reasonable and probable cause that the Claimant obtained the yams by false pretences. She further submitted that the Claimant was offered station bail the same day he was arrested but was unable to take up the bail offer. The Claimant was taken to court at the earliest possible time.

Was the Claimant falsely imprisoned? Section 33 of the Constabulary Force Act states:

“Every action to be brought against any constable for any Act done by him in 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.”

It is a great burden on the Claimant to prove that the Defendant acted maliciously or without reasonable or probable cause in taking him into custody. According to *Halsbury's Laws of England* (4th ed. Para 1325) an action for false imprisonment lies at the suit of a person unlawfully imprisoned against the person who causes the imprisonment. Any total restraint of the liberty of the person, for however short a time by the use or threat of force or by confinement, is an imprisonment. However a

defendant in an action for false imprisonment can succeed if he pleads and proves that the imprisonment was legally justified.

In the case of *Peter Flemming vs. Myers and The Attorney General* (1989) 26

J.L.R. 537 – 538 Morgan, J stated:

“It is a question of fact and must be determined on the circumstances of each case ... It is for the trial judge on an examination of all the circumstances as elicited from the police, to determine reasonableness and in his good sense and understanding to decide from the facts before him such time as he finds it can be held that a person was unreasonably detained.”

In the instant case the Claimant was in custody for 41 hours. The 1st Defendant said he offered him station bail the first day he was taken into custody, but the Claimant was unable to take up the offer as he had no surety in place. He was taken to Court on the first available date, two days later.

In relation to malicious prosecution this is tied to the false imprisonment. It is for the Claimant to show that there was an improper motive. It was suggested by the Claimant that he was locked up by the 1st Defendant to teach him a lesson for him to pay a debt that there was no honest belief that a criminal act was committed based on the facts known to by the 1st Defendant.

It was submitted on behalf of the 1st Defendant that even if he was mistaken and the Claimant was acquitted of the charge, once the 1st Defendant acted honestly that is without malice and with reasonable and probable cause then a claim for malicious prosecution must fail.

As Lord Devlin said in the case of *Glinski vs McIver* 1962 A.C. at Page 726.

“Malicious Prosecution” “ means that there must be cause (that is sufficient grounds) for

thinking that the plaintiff was probably guilty of the crime imputed. This does not mean that the prosecutor has, to believe in the probability of the conviction. The prosecutor has not got to test the strength of the defence; he is concerned only with the question of whether there is a case fit to be tried.” Lord Devlin further said that “malice” it is agreed covers not only spite and ill-will but also any motive other than a desire to bring a criminal to justice.

An analysis of the evidence shows that the 1st Defendant received a report from Mr. Adlam which stated that he gave the Claimant 80lbs of yam heads on the instruction of Miss Smith and that he the Claimant had refused to pay for the yams. Acting on this information the 1st Defendant investigated the matter and in the presence of Mr. Adlam admitted that the yam heads were the property of Miss Smith and promised to pay for them. The 1st Defendant allowed the Claimant time in which to pay for the goods. After some time had lapsed the 1st Defendant received a further report of the non-payment by the Claimant. The 1st Defendant went in search of the Claimant and when asked about the non-payment he is alleged to have said “Me nah pay for any yam heads”. It was on this basis the Claimant was taken into custody and charged for obtaining goods by false pretences.

I find as a fact that the 1st Defendant received a report and acted on that report as he was duty bound to do. I also find as a fact that the 1st Defendant acted honestly and without malice and with reasonable and probable cause. There is no evidence of which I can find that there was an improper motive for the 1st Defendant to lock up the Claimant and to teach him a lesson.

I also find as a fact that the Claimant was offered station bail as soon as he was arrested and taken to Court at the earliest possible time.

I do not find the Claimant to be an entirely truthful witness. I do believe the 1st Defendant when he said the Claimant said on the second occasion that he was not paying for any yams.

In relation to the Assault I have doubts as to whether or not he was threatened with a baton at the police station by the 1st Defendant.

In sum, the Claimant in my view has failed to prove malice against the 1st Defendant or that he was falsely imprisoned.

There shall be judgment for the Defendants with costs to be taxed or agreed.