



[2013] JMSC CIV. 169

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2008HCV04026**

**BETWEEN            KERRY ANN LONGMORE –BAILEY            CLAIMANT**  
**AND                    THE ATTORNEY GENERAL OF JAMAICA            DEFENDANT**

Mrs. A. Leith instructed by Kinghorn & Kinghorn for Claimant

Miss. H. Edwards and Mr. O Francis instructed by Director of State Proceedings

**Heard on: May 6<sup>th</sup> & 20<sup>th</sup> 2009, October 19<sup>th</sup> 2011, April 23<sup>rd</sup> 2012, May 21<sup>st</sup> 2012,  
June 1<sup>st</sup> & 20<sup>th</sup> 2012 & November 19, 2013**

False Imprisonment – Loss of personal liberty – Status of the Claimant awards to be adjusted for inflation- Aggravated damages hurt feelings and loss of dignity- Exemplary damages- victim of punishable behavior- constitutional redress not a substitute for involving judicial review.

**Campbell, J.**

Background

[1] Mrs. Longmore – Bailey 31 year old medical technologist, had graduated from University in 2004, and had started working that same year at a private medical laboratory, Bionics Lab. The company operated five facilities. Mrs. Longmore –Bailey was a supervisor in the technical department of the branch situated at 42 Cumberland Road, Spanish Town in the parish of St. Catherine. Her duties included signing blood

reports, analyzing blood samples and other body samples. Prior to working at Bionics, she had worked at several laboratories operated by the Government of Jamaica.

[2] On the 4<sup>th</sup> March 2008, it first came to her attention that police officers were trying to locate her. This as a result of a call she had received from a co-worker at the Windward Road Branch Office of Bionics Limited. Later that same evening, she observed a news report on television which shows persons being arrested on the complaint of the Island Revenue Department.

[3] She spoke with the accountant and requested that the matter be brought to the attention of the managers Mr. Owen Smith and Clemine Smith. At this juncture she was not unduly perturbed because according to her, "I know that I do not own any company and I am not indebted to the government" The following day she was assured by a co-worker, that although the matter had not been brought to the attention of Mr. Owen Smith, it had been brought to the attention of another manager, Miss. Clemine Smith.

[4] Mrs. Longmore-Bailey said she left work, and whilst on her way home she learnt that two policemen were at her office with a bench warrant for her arrest. She was advised that the officers left directions that she should turn herself in at Sutton Street Resident Magistrate Court. Mrs. Longmore-Bailey was now terrified at the turn of events. She says in her witness that she was quite "confused and traumatized"

#### Claimant's imprisonment

[5] In the afternoon on the 5<sup>th</sup> March 2008, she accompanied Mr. Smith to Spanish Town Resident Magistrate Court, arriving there at about 2:00pm. The Clerk of Courts advised that the arresting officer had just left. He was called on the phone the Claimant said she was traumatized at the thought of going to jail. The arresting officer did not return. The following morning on her return to the Resident Magistrate Court, she said a police officer came up to her and asked "Are you Miss. Kerry-Ann Longmore- Bailey?" The Claimant answered in the affirmative. The police officer then said, "You know how

long we have been looking for you? We are going to arrest you” The claimant then enquired of the officer, “if he was going to handcuff her.” She was told “no” but she was to be placed on the “arrest bench” as she was in court. She said a warrant was executed on her. She was detained for a period of two hours. She had been arrested in the full view of a packed court room. On the bench on which she was directed to sit she could be seen by all.

[6] Mrs. Longmore-Bailey says “she felt embarrassed and wanted to bury myself in the earth.” She was tormented by the thought of being separated from her three young children, her name being on the government records and her reputation being tarnished. She complained that she was starving. The Inland Revenue Representatives were present in court, but there is no report of their participation in the proceedings. She was offered bail in the sum of \$50,000 on her return to court on the 25<sup>th</sup> March 2008, the charges were dismissed against her. There were no further inquiries made of her or explanations given.

### The Claim

[7] On 9<sup>th</sup> September 2008, the Claimant filed a claim alleging;

- (a) that members of the Jamaica Constabulary Force and/or Island Special Constabulary Force acting or purporting to act in the lawful execution of their duties, unlawfully and or maliciously and /or without reasonable and /or probable cause falsely imprisoned, or caused to be falsely imprisoned, the Claimant, by arresting and detaining the Claimant at the Sutton Street Resident Magistrate Court on the Bench Warrant.
- (b) That agents of the Crown involved in Tax Administration without reasonable and probable cause preferred false charges against the Claimant, namely failure to file Company’s tax and non-payment of company taxes. On the 25<sup>th</sup> day of March 2008, the said charges were

dismissed or withdrawn in the Sutton Street Resident Magistrate Tax Court.

- (c) Claims damages for negligence, in that agents of the Crown involved in Tax Administration without reasonable and probable cause preferred false charges against the Claimant, namely failure to file Company's Tax and non-payment of company taxes. The said charges were negligently preferred as no investigation, or no sufficient investigations were done prior to the Claimant being charged so as to ascertain that the Claimant was merely a employee of the company in question and not an owner. As a consequence of the said False Imprisonment and Malicious Prosecution, the Claimant has suffered loss and damage.

The Claimant claims

- (i) Damages
- (ii) Exemplary Damages and /or Aggravated
- (iii) Interest there

The Defence

[10] The defence filed on June 3<sup>rd</sup> 2009, alleged that the Claimant held herself out as capable of accepting service of the summons pursuant to the Education Tax on behalf of Bionics Medical Laboratories and Clemine Smith. By accepting service, she held herself as being responsible for the knowledge of the contents of the documents. She is deemed to have known that she or some other representative of the company or Clemine Smith ought to have attended the hearing on the 27<sup>th</sup> February 2007 and March 5<sup>th</sup>, 2007.

[11] The Claimant failed to appear on those dates neither did any other representative of the company. Warrants for disobedience were accordingly issued pursuant to the non

attendance of the Claimant. The police officer who executed the warrant of disobedience on the Claimant did not act unlawfully, pursuant to the judicial process issued by the learned Resident Magistrate. The Claimant therefore was not falsely imprisoned in the circumstances. That no criminal charges were preferred against the Claimant, and the law was not set in motion against her.

Claimants case overruled

[12] On the 23<sup>rd</sup> April 2012, at Pre-Trial Review, before Sykes J, the learned judge directed the Claimant that 'it was not possible for the case to succeed and he would not permit it to proceed to trial as framed.' he ordered that the Claimant be permitted to amend claim and to file and serve amended Claim Form and Particulars of Claim on or before the May 11<sup>th</sup>, 2012.

[13] On the 8<sup>th</sup> May 2012 the Claimant filed an Amended Claim Form alleging inter alia:

"That members of the Jamaica Constabulary Force acting or purporting to act in the lawful execution of their duties, unlawfully and/or maliciously and /or without reasonable and /or probable cause falsely imprisoned, or caused to be falsely imprisoned, the Claimant by arresting and detaining the Claimant at the Sutton Street Resident Magistrates Court purportedly on a Bench Warrant or a Warrant of Disobedience." Her arrest was broadcast on Prime Time News on the 6<sup>th</sup> and 25<sup>th</sup>, which has added to the discomfort felt by the Claimant.

[14] Further the Claimant claim, is against the Defendant to recover Damages for breach of section 15 and 16 of the Constitution of Jamaica. The specific allegation was that members of the JCF, acting or purporting to act in the lawful execution of their duties, unlawfully and /or maliciously/ and or without reasonable and probably cause deprived the Claimant of her personal liberty and restrained her freedom of movement when they arrested and detained the Claimant at the Sutton Street Resident Magistrate Court purportedly on a Bench Warrant.

[15] The Constitutional breaches were particularized thus at paragraph 8

- (i) The Claimant was deprived of personal liberty when she was arrested and detained at the Sutton Street Court for two hours before she was admitted bail. This is in contravention of section 15 and 16 of Constitution of Jamaica and there was no legal basis for the Claimant's arrest and detention.
- (ii) The Claimant was granted bail on the 8<sup>th</sup> day of May 2008 when there was no legal basis for the Claimant to have had to be admitted to bail to regain her liberty.
- (iii) The Claimant was ordered to return back to court on the 25<sup>th</sup> March 2008 and was compelled to do so on the 25<sup>th</sup> March 2008, although there was no legal basis for her to be so enjoined.
- (iv) The Claimant was put before the court and threaten as one who was accused of a crime when the Claimant had committed no crime and had not been notified by the Crown of any such accusation of a crime.

#### The Amended Defence

[16] The Defendant in an Amended Defence filed on the 1<sup>st</sup> June 2012, said at paragraph 3;

The Defendant will say that on or about March 6<sup>th</sup>, 2008 at about 10:20am Cpl. Barnes detained the Claimant at the Sutton Street Resident Magistrate Court pursuant to Warrants of Disobedience of Summons dated March 5<sup>th</sup>, 2007 and March 27<sup>th</sup>, 2007 respectively issued by Resident Magistrate Owen Parkins. The Warrants commanded Cpl. Barnes to arrest and detain the Claimant and Cpl Barnes therefore acted lawfully, with reasonable cause and without malice in carrying out the orders of the said Resident Magistrate Owen Parkins.

[17] Save and except that the Defendant neither admits nor denies that the Claimant was detained for two (2) hours, paragraphs 4, 5 and 6 of the Amended Particulars of Claimant are admitted. The Defendant will say that the issuing of the Warrants of Disobedience of Summons by the Resident Magistrate that resulted in the Detention of the Claimant was unlawful and the Crown admits that the Claimant was falsely imprisoned.

[18] In addition the Defendant admits the averments contained in sub-paragraphs (ii) and (iii) paragraph 8, of the Amended Particulars of Claim. These admissions were in agreement to the Claimant's contentions that there were no legal basis for the Claimant to be admitted to bail to regain her liberty, and that there was no legal basis to cause her to return to court on the 25<sup>th</sup> March 2008.

[19] It was submitted on behalf of the Claimant that the Defendant having admitted liability for the Claimant's false imprisonment, it is a matter for the court as to whether the Claimant's constitutional rights were also breached thereby entitling the claiming of an award for False Imprisonment and award for Vindictory Damages. It was submitted that the Claimant's rights were violated in "the most egregious fashion".

#### Damages for false imprisonment

[20] Several cases were rehearsed before the court to support the submissions on behalf of the Claimant, that an award of \$100,000.00 was appropriate in the circumstances of Mrs. Longmore-Bailey's case. In **Sharon Henry-Greenwood**, the Claimant was on the 26<sup>th</sup> October 2005, awarded \$100,000.00 for being detained for a period of approximately 15-16 hours. Counsel also placed reliance on **Maxwell Russell v Attorney General & Corporal McDonald**, (delivered on the 18<sup>th</sup> January 2008) the court began at a daily rate of \$75,000.00 according to Counsel the updated sum yields \$106,092.96 In **Desmond Prescott v Attorney General**, on 18th April 2008, the court awarded the sum of \$100,000.00 for a detention of five hours.

[21] In **Greenwood-Henry's** case, Sykes J, referred to **Hervin Fearon v The Attorney General** delivered on the 31<sup>st</sup> March 2005, in which Harris J, in making an award of \$280,000.00 for false imprisonment for 3 ½ days supported her award with **Cassie v Williams and the Attorney General** Suit No. 1994 /364 (assessed February 20, 2000) that the court had awarded \$50,000.00 for a twenty hours detention. Miss Edwards, for the Defendant, submitted that an award of \$54,870.00 would be appropriate based on the authority of Keith Bent, where an award was made in the sum of \$60,000.00 to each of the Claimants, that sum updated was \$9, 680.00 for six hours period of imprisonment.

[22] In the English Court of Appeal, the decision of **Thompson v Commissioner of Police** [1988] Q.B. 498, demonstrate that like personal injury cases, awards for false imprisonment, i.e. for loss of liberty, and damages for malicious prosecution, are compensation which are akin to pain and suffering, and should be adjusted for inflation. It is therefore in order to use the Consumer Price Indices to update false imprisonment awards. Lord Wolf M.R. in **Thompson** at page 515, indicates a standard for the first hour or day that the Claimant has been deprived of her liberty then thereafter on a reducing scale, to keep the “damages proportionate with those paid in personal injuries.”

[23] The status of the Claimant is a relevant conviction in a claim for false imprisonment. Brooks J, in the consolidated claims of **Keith Bent, Faithlyn Bent and Sophia Bent v The Attorney General**, Suits 1998/ B330, & 384 & 385, distinguished the case of **Colin Henry v Attorney General and Ors.** (1993) 30 JLR 227, on the basis that, Mr. Henry's status as a broadcaster and an Attorney -at- law were considered in granting the award. So was the fact that the arrest had received much publicity.

[24] False imprisonment is essentially a loss of personal liberty, Mrs. Longmore-Bailey was restrained to what she describes as an “arrest bench” in the court room .She remained on the bench for two hours. She did not think she was free to move from that bench, having been placed there by the arresting officer (See **Bryan Green v Sgt**



**Cochrane and The Attorney General** Claim No. 2005/HCV 01106. Paragraphs 8 -15)

The bench was shared with other persons. She was the only female on that bench. The court room was crowded and she could be seen by all. The Claimant here has said she suffered a loss of dignity and felt humiliated. She had no previous encounters with the law. She was not handcuffed. She was not searched. I would make an award of \$80,000 for false imprisonment.

Aggravated damages

[25] On behalf of the Claimant it was urged that the court should make an award of \$1,500,000.00 for aggravated damages. Aggravated damages are compensation for damages for hurt feelings and a loss of dignity. In **Thompson**, Lord Wolf advised that a separate award is recommended under this head, to enhance transparency. Mrs. Longmore-Bailey said of her public arrest in the court room, "I wanted to bury myself in the earth." She testified that she became tearful. People in her community have spoken of her in a negative light. However, she had an opportunity in open court to explain that she was not the owner of the business, and in addition to point out the owner who was present in court.

[26] The tax administration officials appeared not to have participated in the discussion before the court. The Resident Magistrate explained matters to her. She testified that she had hopes of starting her own business and was apprehensive of the effect the publicity on Prime Time radio on consecutive days would have on those aspirations. She left Bionics Lab but not because of the incident. She however encountered no problems in securing employment after leaving the Bionics Lab. She worked executing the same duties in those jobs and experienced no diminution of duties. There were no adverse effects from the incident in relation to any organization to which she belonged. She was not handcuffed. She was not searched. The police officer was professional and there was no complaint about his treatment of the Claimant.

[27] Miss Edwards submitted that Greenwood Henry's case and the others on which the Claimant relied were easily distinguishable as containing much more serious allegations, than the instant case. Greenwood Henry's case accepted evidence that Mrs. Greenwood Henry had suffered post traumatic stress disorder that a female police officer's fingers were inserted in her vagina in conditions that were deemed insanitary. She had been x-rayed at K.P.H given laxatives and further vaginal and anal examination done under the directions of the investigating officer. She had three blood samples taken from her. I agree that the degree of outrageous behavior in Mrs. Longmore-Bailey's case is well below those in Greenwood Henry's case. I accept that Mrs. Longmore-Bailey would have felt humiliation and a lost of dignity at being arrested in full view of the public. That the attendance at the courtroom and the radio broadcasts, would have been a further source of loss of dignity. I would make an award of \$500, 000 for aggravated damages.

#### Exemplary damages

[28] An award of exemplary damages serves to punish the Defendants for the impugned acts. Counsel for the Claimant submitted that the Claimant was arrested in circumstances where she had done nothing illegal. She further submitted that such an act should be deemed and accepted as oppressive, arbitrary, highhanded and outrageous behavior by a servant of the Crown. The award in Sharon Greenwood Henry, of \$700,000.00 was relied on, updated it represented \$1, 356,945.50 based on that, Counsel submitted that an award of \$1,500,000.00 is appropriate in the circumstances of Mrs. Longmore-Bailey's case.

[29] Counsel for the Crown, submitted that the police officer had a Warrant for Disobedience of Summons. It represented an order from a judge. The officer had no choice but to execute that process. Counsel said of the executing officer he did nothing wrong and the warrant has not been challenged formally by the Claimant. She further submitted that despite the admission of the Attorney General to false imprisonment, the decision of the Resident Magistrate in issuing the warrant has not been impeached.

Miss Edwards distinguished Nicole Fullerton, on the circumstances of the arrest, the Claimant was taken from the departure lounge of the Norman Manley International Airport, to the Duhaney Park Police Station and brought before the court 2: 00 pm the following day.

[30] Fullerton had been detained for about twelve hours. She had not had a bath, had not eaten; she had not breached her bail conditions which did not prevent her from travelling as the arresting officer was advised. She was denied the right to travel, confined to a small cell, and had to sleep on a concrete cot. She had to seek psychiatric care. She suffered public humiliation from the broadcast of her arrest by both the newspaper and the television stations.

[31] Counsel for the Claimant, has said the award falls under the first of Lord Devlin's three categories enumerated in **Rookes v Barnard** [1964] 1 All ER 367 in that it is oppressive, arbitrary or unconstitutional actions by the servants of the government at page 411 of the judgment Lord Devlin describes what constitutes, oppressive behavior:

*“Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's he might perhaps be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. It is true that there is something repugnant about a big man bullying a small man and very likely the bullying will be a source of humiliation that makes the case one for aggravated damages, but it is not in my opinion punishable by damages.”*

[32] Lord Devlin, advised that three considerations be satisfied before an award of exemplary damages be made.

- (i) First, the plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour.
- (ii) Secondly, the power to award exemplary damages constitutes a weapon that while it can be used in defence of liberty as in the **Wilkes** case, can also be used against liberty.
- (iii) Thirdly, the means of the parties, irrelevant in the assessment of compensation, are material in the assessment of exemplary damages.

[33] There is no evidence of oppression proven against any state agent or servant. The police officer in the execution of the warrant as I have noted evoked no complaints from the Claimant as to his conduct. There is no evidence of conduct that calls for punishment on the officer's part. The issuance of the warrant for disobedience, was not arbitrary, capricious or high-handed, it is grounded in a summons that had been served on the Claimant for the errant taxpayer.

[34] The first defence filed by the Defendants explained that a person who receives such a summons acquires certain obligations under the relevant legal framework. That construction may have been wrong, if so that error does not translate into arbitrary or oppressive conduct. That was the answer that the defence raised before the Claimant was advised that the claim would not be allowed to proceed as formulated. Mrs. Longmore-Bailey was allowed to state her case in court. The Resident Magistrate explained certain issues to the Claimant and she was offered bail. On her return to court the matter was not pursued. The decision of the RM has not been impeached. I would make no award for exemplary damages.

Constitutional redress

[35] Miss Hazel Edwards acknowledged that the Claimant had not been served with a summons to attend court. According to Miss Edwards, although, a warrant ought not to have been issued for the Claimant; damages for false imprisonment could be an adequate remedy, in accordance with S25 (1) of the Constitution. It was submitted on behalf of the Claimant that she is entitled to vindicatory damages for breach of her constitutional rights pursuant to section 15 and 16 of the Constitution of Jamaica. The particulars of Claim, cites the lack of a legal basis for her detention, for her having to be admitted to bail and being compelled to return to court. The complaint of deprivation of liberty is essentially the detention of two hours of false imprisonment. The Defendant admits that there was no legal basis for the grant of bail before she could regain her liberty and for compelling her return on the 25<sup>th</sup> March 2008.

[36] The issuance of the summons in the name of the Claimant was an action for which the tax administrators bear responsibility. Was the issuance of the summons in breach of the regulatory procedures? or was the error, if error there be, on the part of the Resident Magistrate? The answer to those questions lies with a review of the actions of the respective entities, not with a constitutional challenge. The warnings of Lord Diplock in **Harrikissoon v Attorney of Trinidad and Tobago** [1980] AC 265 against applications for constitutional relief being used as a substitute for the normal procedures for invoking judicial control of administrative action. Permitting such use of applications for constitutional redress would diminish the value of the safe guard applications are intended to have. (See **The Attorney-General of Trinidad and Tobago v Siewchand Ramanoop** Privy Council 13/2004 delivered the 23 March 2005, at paragraph 24 inter alia:-

Lord Diplock observed that an allegation of contravention of a human right or fundamental freedom does not of itself entitle an applicant to invoke the section 14 procedure if it is apparent this allegation is an abuse of process because it is made “solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right.”

[37] At paragraph 25

In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical but by no means exclusive example of a special feature would be a case where there has been an arbitrary use of state power.

[38] The Claimant having been adversely affected by the decision of the tax administrators and/or the Resident Magistrate would pursuant to Civil Procedure Rule (CPR) 56.2(2) (a) would have sufficient interest to apply for judicial review. On such an application, the reviewing court has a range of remedies to adequately redress the applicant. Civil Procedure Rules (CPR) 56.1(4) provides;

In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings grant –

- (a) an injunction
- (b) restitution or damages; or
- (c) an order for the return real or personal

[39] Is there some other feature in the case that indicates that the means of legal redress otherwise available would not be adequate. In **Siewchard Ramanoop** Lord Nicjolls of Birkenhead, had identified, arbitrary use of state power as one such feature. In **Rookes v Barnard** Lord Devlin spoke of “oppressive, arbitrary and unconstitutional action by servants of the state” and had defined “oppression” in terms of “bullying by a powerful state.” There is nothing arbitrary or capricious about the decision that had caused the Claimant to be before the court. In the case of **Tamara Merson v Drexel**

**Cartwright & Attorney General** P.C. Appeal no. 61 of 2003 Lord Scott of Foscote described the actions of the state agents at paragraph 20, inter alia;

*“the wholesale contempt shown by the authorities in their treatment of Ms. Merson, to the rule of law and its requirements of the police and prosecution authorities, makes this in our opinion, a very proper case for an award of vindicatory damages for the infringements of her constitutional rights.”*

Although errors were made which the state has admitted the evidence does not disclose any wholesale contempt by the authorities such as to warrant an award for vindicatory damages. I would make the following orders:

False imprisonment \$80,000.00

Aggravated damages \$500,000.00

Cost to the Claimant to be agreed or taxed

I would make no award for vindicatory damages.