[2013] JMSC Civ 193

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2006 HCV00501

BETWEEN	**RADCLIFFE MYLES (Claiming on behalf of the Estate of Winston Myles)**	**CLAIMANT**
A N D	**ATTORNEY GENERAL OF JAMAICA**	**DEFENDANT**

Arlene Harrison Henry and Rachel Dibbs, for the claimant

Cheryl Bolton, instructed by the Director of State Proceedings, for the defendant

Heard: October 31, 2013 and November 15, 2013

ASSAULT – BATTERY – FALSE IMPRISONMENT – MALICIOUS PROSECUTION – FAILURE OF DEFENCE TO LEAD ANY EVIDENCE – APPLICATION DURING TRIAL TO STRIKE OUT DEFENCE – EFFECT OF FAILURE OF DEFENCE TO LEAD ANY EVIDENCE DURING TRIAL – WHAT CONSTITUTES ASSAULT – NEED TO PROVE LOSS AND/OR DAMAGE IN CLAIM FOR DAMAGES FOR MALICIOUS PROSECUTION – CLAIM FOR EXEMPLARY DAMAGES – CONSIDERATION OF HEARSAY EVIDENCE DURING TRIAL – SUMMARY JUDGMENT – PRIMA FACIE CASE NOT TO BE EQUATED WITH PROVEN CASE

Anderson, K., J.

[1] In this claim, the claimant has claimed damages against the defendant for assault, battery, false imprisonment and malicious prosecution. The claimant has sought, in said claim, to recover general damages, special damages, aggravated damages and exemplary damages. The claimant is, by order of this court, pursuing this claim on behalf of the estate of Winston Myles – deceased. When this claim was commenced, Winston Myles was then alive. Having later passed away, his brother – Radcliffe Myles is now continuing this claim, on behalf of the deceased's estate,

pursuant to the law as set out in the **Law Reform (Miscellaneous Provisions) Act**. The deceased is hereinafter referred to in these reasons for judgment, as 'Mr. Myles'.

[2] Mr. Myles has alleged, in his amended particulars of claim, that at all material times, he was riding his bicycle without lights on Knutsford Boulevard, at 9:00 p.m. on February 19, 2004 and he stopped riding his bicycle, upon having been signalled to do so, by one Constable Forbes, who also then requested a search. According to his version of events, both as set out in the amended particulars of claim and in his witness statement and also in documentary evidence which was admitted during the trial, as exhibits, Constable Forbes then 'draped him' in his pants waist and said '*hey bwoy wha yu have pon yu*?' Mr. Myles also alleges that he then came off the bicycle and pulled his shirt from his pants and said '*me no have nuttin pon me*.' Mr. Myles further alleges as follows: Constable Knott violently hit him in his mouth, causing his mouth to bleed and his dentures to break and said '*hey bwoy why you a chat to police so*?' The constable walked off. The claimant followed behind, enquiring: '*a wha mi do unu*?' '*Wha me do yu, wha mek yu do this to me*?' Constable Forbes then flung a stone hitting him, which caused a finger in his left hand to be broken and also caused that finger to receive a separate type of injury, which also, like his mouth, bled. That is revealed from the claimant's witness statement and from medical evidence, in the form of a medical report, which was led into evidence in support of the claimant's claim. On the same night, Mr. Myles reported the constables to the Knutsford Boulevard police post and he also, on February 23, 2004 (this therefore having been no more than four days after the incident which he has made complaint about and claim for, to this court, allegedly occurred), made a report regarding said incident, to the Police Public Complaints Authority – which at that time, was an adjunct of the Police Force of Jamaica, which was tasked with the specific responsibility of investigating complaints made of improper, and/or unlawful conduct by police officers. Mr. Myles also received medical attention at the Kingston Public Hospital on the day of the incident and visited the out-patient clinic at that hospital, on two occasions subsequent to the date of that incident. In the claimant's amended particulars of claim, the claimant has alleged that he was charged by the aforementioned Constable Forbes, for resisting arrest, assaulting and wounding a constable. Interestingly enough, Mr. Myles though, had stated in his report to the Police Public Complaints Authority (hereinafter referred to as 'the PPCA'), that after he

was, on the night of the incident, taken to the Kingston Public Hospital, in the accompaniment of a police officer, he was thereafter taken back to the police post at New Kingston, where, as he then termed it, '*one of the officers who injured me, arrested and charged me for (1) Riding bicycle without light; (2) Assaulting police and (3) Disobeying a constable's order.*' This is interesting, since it actually serves to materially dispute Mr. Myles allegation as made in his amended particulars of claim, which he certified as being true, in respect of the offences which he was criminally charged for. The best and certainly also, the most compelling evidence as regards what were the charges brought against Mr. Myles, in respect of the relevant incident, has been derived from the magistrate court's record in respect of those charges, for which the claimant was before the Half Way Tree Resident Magistrate's Court on February 18, 2005. The same was admitted as hearsay evidence, by means of being an exhibit attached to the affidavit of one Venice Rankine, who was, when she deponed to that affidavit, a clerk employed in the Records Division of the Half Way Tree Resident Magistrate's Court. That court record has revealed that Mr. Myles was charged with the offences of:

(1) Disobeying a police order; and
(2) Resisting Arrest; and
(3) Breach of Road Traffic Act; and
(4) Malicious Destruction of Property; and
(5) Assaulting a police officer; and
(6) Unlawful wounding

The court record shows that the charges for 'Breach of Road Traffic Act', and for 'disobeying a police order', were transferred to the Traffic Court, for mention there. The outcome of those charges, at court, has not been alleged in the claimant's amended particulars of claim. In the claimant's witness statement however, Mr. Myles has provided evidence as to his having been acquitted of all charges. Although he has not made it as clear as he should or could have, in his witness statement, it does appear to this court and is concluded by this court, that he has made separate reference, in two separate paragraphs of his witness statement, as regards his acquittal of all charges in the traffic court on the one hand and presumably also, at the Half Way Tree Resident

Magistrate's Court, on the other hand (See paragraphs 10 and 12 of Mr. Myles witness statement, in that regard).

[3] As a general rule, a party will not be permitted to lead evidence of matters which have not been particularized in that party's statement of case. See **Rule 8.9A of the Civil Procedure Rules** (hereinafter referred to as 'the CPR'), in this regard. This court can however, in appropriate circumstances permit such evidence to be given, notwithstanding that the relevant party's statement of case has neither expressly, nor even impliedly, foreshadowed such evidence. See again, **rule 8.9A of the CPR** in that regard. This court believes it appropriate, in the interests of the justice, to so permit the claimant to rely on his evidence as to the dismissal of and/or his acquittal in respect of all charges brought against him in the case at hand, this especially since, even though it should be a matter of public record and therefore, could, relatively easily have been disputed, if the defendant had wished to do so, the defendant did not at all dispute same, during the trial.

[4] It has neither, in the claimant's statement of case, nor in Mr. Myles' witness statement, been alleged, that there ensued, embarrassment on his part in having been brought before the court pursuant to any charge having been wrongfully and maliciously instituted against him, nor has he alleged that he suffered any mental distress or anguish arising from same. Mr. Myles has also, not at all, alleged that he incurred expense and/or suffered any financial loss, arising from the alleged malicious prosecution by relevant authorities, of criminal charges against him.

[5] What is not in doubt, however, is that, for the purposes of the law, the prosecution of Mr. Myles began when the charges were laid against him, that being, on the night of February 19, 2004. This court therefore concludes that the prosecution of the claimant lasted for one year, as he, was acquitted 'of all charges' on February 19, 2005.

[6] A claim for damages for malicious prosecution, is, it should be carefully noted, unlike a claim for damages for trespass to the person, or in other words, for assault and/or battery and /or false imprisonment, an action on the case and therefore, it is essential for the claimant to prove damage/loss. Such loss/damage is not to be

presumed by the court. In **Saville v Roberts** – [1698] 5 Mod. 394, Holt C.J. classified damage for the purpose of the tort of malicious prosecution, as being of three categories, any one of which might ground the claim. Malicious prosecution might damage a man's fame, or the safety of his person, or the security of his property, by reason of his expense in repelling a just charge. In the case, at hand, the claimant has led no evidence which would even so much as enable this court to infer that Mr. Myles has suffered damage which falls within either of the three above-mentioned categories as lain down in the **Saville v Roberts** case (*op.cit.).* This court though, as has been set out in the text – **Clerk and Lindsell onTorts**, 16th ed., at para. 19-06, accepts that at least as a general rule, there would be a moral stigma which would inevitably attach where the law visits an offence with imprisonment. In the case at hand though, the claimant will, for reasons which are set out further on in these reasons for judgment, recover damages for false imprisonment and in that regard, this court will assess such damages by taking into account said moral stigma. It should be noted though, even from now, that such a moral stigma will only 'surround' the claimant in some cases, since in other cases, if the claimant is notorious for being either in breach of the law, or as a person who has previously been convicted, then clearly, such moral stigma may actually, quite properly, not be deemed by this court as having surrounded the claimant at any time, as a consequence of the proven malicious prosecution and/or false imprisonment of him, on one particular occasion.

[7] The claimant is not entitled to recover what is typically termed by courts, as 'double compensation,' arising from his having been falsely imprisoned and maliciously prosecuted. Such 'double compensation' would be what he would attain, if this court were to award him damages for any moral stigma that may be automatically inferred as having been endured by him as a consequence of his having been maliciously prosecuted and also do the same, in respect of his having been falsely imprisoned. In the circumstances, this court declines to hold the defendant liable to the claimant for malicious prosecution, this even though, during the trial, this court was made aware by the defence counsel, that she is conceding that the claimant was maliciously prosecuted. Damage to Mr. Myles was required to be proven in order for the claim for damages for malicious prosecution to even have been lawfully maintained. Not only has such damage not at all been alleged in the claimant's statement of case, but further,

the same was not even so much as the subject of any evidence led on the claimant's behalf at trial, much less proven. If there was any damage suffered by Mr. Myles, arising from his having allegedly been maliciously prosecuted, such damage will be fully taken into account, under the claimant's claim for damages for false imprisonment.

[8] It is always for this court to determine whether an admission as made, entitles a party to judgment on admission and what the terms of that judgment should be. See **rule 14.4 of the CPR**. It is not, when an 'admission' is made, to be taken as being a matter of course in all cases, that judgment on admission must be entered by this court. Furthermore, it is even open to this court, to allow a party to amend or withdraw an admission. See **rule 14.1(b**) read along **with rule 26.2 of the CPR**. Insofar as the case at hand is concerned, this court does not believe that it would at all enure to the interests of justice, if the claimant were to be awarded damages for malicious prosecution, in circumstances wherein he has clearly failed to both allege and prove a critical element of that tort, that being: proof of damage. This court holds the view that when crown counsel – Ms. Bolton, gave notice to this court of her client's admission as regards the tort of malicious prosecution, that she was not then either considering, or properly considering, the damages that the claimant needed to have proven, in order to properly have succeeded in proving that tort. Whether my conclusion in that regard, is correct or not though, what I am not in doubt about, is that it would be unjust for the claimant to succeed as to a claim which he has not proven and not even so much as properly made allegations in respect of said tort, in his statement of case, as could properly have enabled the said tort to have been proven, this bearing in mind, the very important provisions as set out in **rule 8.9A of the CPR**.

[9] It has been strongly contended by the claimant's counsel, that since the defendants have led before this court, whether by way of documentation, or by means of oral evidence, absolutely no evidence whatsoever, this should, merely as a result thereof, have led to judgment being ordered by this court, in the claimant's favour and in fact, had, during the trial, after the defence counsel had informed this court that no evidence would be called on behalf of either defendant, applied, at that stage, for the defendants' defence to be struck out.

[10] This court though, having heard from the respective parties' counsel, as regards whether the defendant's defence should be struck out on the basis as set out above, that being a proposition which was strongly opposed by defence counsel, refused to strike out the defendant's defence. I now shall go on to briefly explain the reasons for that decision and further on in these reasons for judgment, I will set out in detail, why I do not accept the submission of counsel for the claimant, that arising from the failure of the defendants to lead before this court during trial, any evidence in any form whatsoever, judgment in the claimant's favour, ought to be granted as a matter of course.

[11] It has, both under Jamaica's rules of court as regards civil proceedings, for a long time now and certainly also, long before Jamaica and England's Civil Procedure Rules (as such rules are now termed) came into force and effect, been accepted as the law, that the court's jurisdiction to strike out a claim, ought always to be used sparingly. As stated in the text – **Blackstone's Civil Procedure**, [2013], at paragraph 33.6:

> *'The reason was, and this has not changed, that the exercise of the jurisdiction deprives a party of its right to a trial, and of its ability to strengthen its case through the process of disclosure and other court procedures such as requests for further information. Further, it has always been true that the examination and cross-examination of witnesses often changes the complexion of a case. It was accordingly the accepted rule that, 'striking out was limited to plain and obvious cases where there was no point in having a trial.'*

Under the CPR of Jamaica, an application to strike out a party's statement of case can be made pursuant to **rule 26.3 of the CPR**, on the basis that such statement of case fails, on its face, to disclose a sustainable claim or defence (as the case may be). Traditionally, this has been regarded as restricted to statements of case which are bad in law, or which fail to set out a complete claim or defence. As such, the power to strike out a party's statement of case out to be restricted to circumstances wherein this court, in a civil claim which is before it, concludes that a party's statement of case is bound to fail. The mere fact that a party's case may be considered by this court as being weak, or fraught with difficulty, or unlikely to succeed, should not be taken by this court, as being sufficient to justify this court in striking out a party's statement of case. Instead, as was

made clear by Lord Craighead in **Three Rivers District Council v Bank of England** (No. 3) – [2003] 2 AC 1, **rule 3.4 (2)(a) of England's CPR**, which is the equivalent of **rule 26.3 (1)(c) of Jamaica's CPR**, is concerned with whether the relevant statement of case which is what is sought to have struck out by the court, as is clearly stated therein, discloses no reasonable grounds for bringing or defending a claim. Striking out powers of a court in a civil claim therefore, are limited to plain and obvious cases, where there was no point in having a trial. See in that regard, **Blackstone's Civil Procedure**, **[2013]**, paragraph 33.6.

[12] Clearly, in respect of the present claim, the application by the claimant's counsel to strike out the defendant's statement of case, was made in circumstances wherein, firstly, trial was not only already underway, but furthermore, was made in circumstances wherein the claimant's case was closed and the defence had informed this court that it then had no witnesses that it could call upon to testify, as one of their intended two witnesses was then overseas undergoing police training, this even though he was aware of the last – scheduled trial dates and their other intended witness had been involved in a very bad road traffic accident, whilst trial of this claim was being awaited and arising from same, he had suffered head injuries, which although now perhaps physically healed, had created in him, a situation wherein he could not, as at the last scheduled trial date, recall any of the events which he had certified as true, in his witness statement.

[13] Furthermore though, Jamaica's CPR, does not contemplate this court striking out a party's statement of case as a means of that which has been described in legal textbooks, as 'enforcing discipline.' In any event, those rules also specify what this court is to do in the event of the failure of one of the parties to a claim, to 'appear' at the trial of that claim. In such circumstances, the court of trial, '**may proceed in the absence of the parties who do not appear**.' See **rule 39.5(b) of the CPR**. That type of situation is to be contrasted with one wherein there is the failure of neither party to appear at trial, in which event, the court is not empowered to strike out a party's defence, but instead, is empowered to '**strike out the claim and any counterclaim**.' See **rule 39.5(a) of the CPR**. This is not, in either event, a mandatory course for this court to take, in either such circumstance, as regards the failure of a party or parties to

attend trial. It is not a mandatory course, because, this court is also empowered to adjourn a trial on such terms as this court thinks just. See **rule 39.7(1) of the CPR**. Furthermore, this court holds the view that if it was intended that this court were to be empowered by Jamaica's rules of court to strike out the statement of case of a party who fails to lead evidence at trial, then our rules of court would have specifically so stated, either in **rule 39.5, or in rule 26.3(1) of the CPR**. Our rules of court have however, not so done. It also is to be noted, that the failure of a 'party' to attend a trial, is not to be equated with the failure of a 'party' to give evidence at a trial, or even with the failure of a 'party' who has provided a witness statement to the court, to give evidence at the trial for the purposes of which, that party's witness statement was filed and served.

[14] The sole defendant in this claim, is the Attorney General. The Attorney General although being a person, is when acting in that capacity, acting as an 'office', as distinct from as an individual. As such, once counsel is present on behalf of the Attorney General at trial, it is taken that the 'Attorney General' is present at that trial. Thus, this court does not hold the view that the failure of the defendant to lead any evidence during this trial, is at all to be equated with a party failing to attend trial and thus, has concluded that **rule 39.5 of the CPR** has no applicability to the situation with which this court was confronted with, when this court was informed by defence counsel, that no evidence would be led at trial, by the defence.

[15] This court is empowered to, as part and parcel of its case management powers, at least as a general rule, even at a stage trial where is then ongoing, to decide, for example, that if the defendant's statement of case has no realistic prospect of success, perhaps for instance, because the defence will lead no evidence at trial, then to award judgment in the claimant's favour. See **rule 39.9 along with rule 15.2 of the CPR** in this regard. This would be the equivalent of this court awarding summary judgment in favour of the claimant, albeit in the midst, or perhaps even, as in the case at hand, near to the close of trial. The test for this court to apply, in determining whether summary judgment ought to be awarded against the defendant is where the defence, or even a proposed defence, of that defendant, has been determined by this court as being one which has no realistic prospect of success. See **rule 15.2(b) and 15.4(2) of the CPR**.

Whether a defence has a realistic prospect of success at trial, is not at all to be equated with whether a defendant had good grounds for defending against a claim. Thus, as stated in paragraph 33.8 of **Blackstone's Civil Procedure**, [2013], it is the law as applied under the **CPR of England**, which are, in terms of the power of the court to strike out a claim, precisely the same there, as are the rules in Jamaica, that, provided that a party's statement of case has raised some question fit to be tried, it does not matter that such case is either weak or unlikely to succeed. See: **Chan U Seek v Alvis Vehicles Ltd.** – [2003] EWHC 1238 (Ch). Thus also, in **Monsanto Plc v Tilly** – [2000] Env LR 313, as referred to in **Blackstone's Civil Procedure** [2013], it was stated by Stuart-Smith, L.J. that **rule 24.2 of the CPR of England**, which is, it should be noted, worded exactly the same as **Jamaica's CPR**, insofar as the bases upon which summary judgment may be entered against a claimant or a defendant, are concerned, gives a wider scope for dismissing a claim or defence. The court should look to see what would happen at trial and if the case is so weak that it has no realistic prospect of success, summary judgment should be entered. There is an inevitable overlap between the two concepts.

[16] Could this court though, even if it had taken the view that the defendant's defence had no realistic prospect of success 'at trial,' have entered summary judgment against the defendant in this claim? The simple answer to this question is 'no.' By virtue of **rule 15.3(b) of the CPR**, this court cannot grant summary judgment against the Crown. The claimant's claim herein, is a claim, 'against the Crown,' as, the Crown Proceedings Act enables this court to hold the Crown liable in respect of the torts committed by one of the Crown's servants or agents. See **Section 3(1)(a) of the Crown Proceedings Act**, in this regard. In addition in the case at hand, in the claimant's statement of case, it has been specifically alleged that the defendant is sued pursuant to the provisions of the Crown Proceedings Act. Furthermore though, in **rule 15.3(d)(i) and (ii) of the CPR**, it is also made clear that summary judgment cannot be granted by this court in respect of proceedings for either false imprisonment or malicious prosecution. Of course, in the claim at hand, the claimant is seeking damages, *inter alia,* for false imprisonment and malicious prosecution.

[17] In any event though, this is not a case in which, even though the defence has led no evidence at trial, it can properly be adjudged by this court, that, in any respect at all, the defence has no realistic prospect of success. In the present claim, it is the claimant who has asserted that Mr. Myles was assaulted, battered, falsely imprisoned and maliciously prosecuted by the defendant's servants or agents. It is therefore he, the claimant, who bears the burden of proof in that regard. As stated in the text – **Murphy on Evidence**, 11th ed. [2009] –

> *'the legal burden of proof as to any fact in issue in a civil case lies upon the party who affirmatively asserts that fact in issue, and to whose claim or defence, proof of the fact in issue is essential. This is a sound rule in civil cases in which the law seeks to hold a neutral balance between the parties and it has been said judicially (**Joseph Constantine Steamship Line v Imperial Smelting Corporation Ltd.** [1942] AC 154, at p. 174, per Viscount Maugham) that it is an 'ancient rule' founded on considerations of good sense and it should not be departed from without strong reason.' (paragraph 4.5, at p. 79)*

[18] In the case at hand, the defence has alleged that Mr. Myles was lawfully arrested. At common law, if a defendant, in response to an allegation of false imprisonment, alleges that the claimant was lawfully arrested, the legal burden rests on the defendant to prove that assertion on a balance of probabilities. See: **Dumbell v Roberts** – [1944] 1 All ER 326, at p. 331, per Goddard, L.J.; **Irish v Barry** – [1965] 8 W.I.R. 177. Of course, since, at common law, a legal burden rests on the defendant in that regard, equally too, an evidentiary burden rests on the defendant in that regard, to lead sufficient evidence to properly justify the relevant tribunal of fact, in concluding that the defendant's legal burden in that regard, has been duly met.

[19] In Jamaica though, as regards the burden of proof in respect of a claim for damages for false imprisonment, that burden, being the legal burden, never shifts from the claimant. It never shifts, because, in Jamaica, **Section 33 of the Constabulary Force Act** requires that, in order for a claimant to succeed in proving a claim in tort, '*against any constable' for any act done by him in execution of his office*, '*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.'

[20] The provisions of **Section 33 of the Constabulary Force Act** therefore, expressly require that the claimant prove that the constable's tort, for which the crown will be vicariously liable, via the Attorney – General as the named defendant, was committed either maliciously, or in the absence of reasonable or probable cause. In the case at hand, it has been alleged by the claimant, in his statement of case, that the defendant falsely imprisoned Mr. Myles, without reasonable or probable cause. Thus, it is required for the claimant, in the case at hand, to prove that he was imprisoned falsely, as a matter of law and fact and that such tort was committed, in relation to him, by a crown servant or agent, without reasonable or probable cause. If therefore, the claimant has failed to prove the absence of reasonable or probable cause for Mr. Myles' arrest, this having to be considered in the context of the circumstances surrounding that arrest, then the claimant would have failed to prove his claim for damages for false imprisonment.

[21] Thus it has come as no surprise to this court, that in the claimant's written closing submissions, as were made by his counsel, it was expressly agreed therein, that the claimant's claim for damages for assault had not been proven – this having been a submission earlier made by defence counsel, during oral closing submissions before this court. That concession, in and of itself, also goes some way towards making it evident as to why it would have been improper and inappropriate and indeed, would have led to a denial of justice to the defendant, if the defendant's statement of case had been struck out, as a sole consequence of the defendant's failure to lead any evidence in support of its statement of case, at trial.

[22] This is exactly why this court had made it clear to the respective parties' counsel, during oral closing submissions as were made before it, that the issue of the claimant's credibility then remained a very live issue and should be directly addressed upon by the parties. This court was then and still is, of the considered opinion, that since the claimant has to prove his claim, since his claim is based on various positive assertions, not only would this court, first have to determine whether his written evidence as given,

when considered along with all of the other documentary evidence adduced as part and parcel of the claimant's case at trial, is credible, but thereafter, must go on to determine whether the evidence as given, to the extent determined by this court, as being credible, is capable, as a matter of law, of leading this court to properly conclude that the claimant's claim has, therefore, been properly proven, or in other words, proven on a balance of probabilities.

[23] The Privy Council has held, in – I**ndustrial Chemical Co. (Jamaica) Ltd. v Ellis** – [1982] 35 W.I.R. 3, that the fact that the sworn testimony of a witness is not directly contradicted by that of another witness or by contemporary documents, does not necessarily mean that it must be accepted as truthful, regardless of the judge's assessment of the witness' credibility – Per Lord Oliver of Alymerton, who delivered the advice of the Board, at pp. 310 f and g. As such, this court does not accept the submission of the claimant's counsel, that this court ought to accept Mr. Myles' evidence, which it must not be forgotten, was admitted solely on paper – as either hearsay evidence, or as agreed documents, since such evidence has not been even so much as attempted to be contradicted, by means of any evidence from the defence. That, it must be categorically stated by this court, with all due respect to senior counsel for the claimant, is not the law.

[24] Added to the issue of credibility of Mr. Myles which has at all times throughout this trial remained as a live issue, is the fact that Mr. Myles' primary evidence, in the form of his witness statement, was admitted at trial, as hearsay evidence, albeit without objection from the defence and thus, was admitted at trial and untested by anyone. It could not have been tested, as in challenged, by means of cross-examination, since, by the date of trial, the claimant was admittedly, deceased. How then, should this court go about the process of considering such evidence, particularly in terms of the credibility or lack of credibility of same? Does the failure of the defence to object to the admission into evidence of the claimant's witness statement, as hearsay evidence, preclude the defence from contending that said witness statement lacks credibility in certain important respects? These are two questions that will now be answered in these reasons for judgment, seriatim.

[25] Hearsay evidence ought always to be viewed by this court, with caution, since evidence admitted as hearsay cannot be subjected to any cross-examination whatsoever. That was so, as regards the claimant's witness statement as given in respect of this claim. Furthermore, with any hearsay evidence, the court of trial has not had the benefit of seeing and hearing from the person whose statement or words has been admitted as hearsay evidence and as such, has not had the benefit of assessing that witness' demeanour, which particularly, while a witness is testifying under cross-examination, can be and usually is, of great assistance to a tribunal of fact, in assessing credibility. This court, in respect of the present civil claim was functioning throughout trial, as a tribunal of fact, as well as, of law. This court therefore, has had to bear in mind that the claimant's primary evidence, has been provided to this court as hearsay evidence. Added to that, is the fact that, at least in this court's mind, there are several unanswered questions which arise from a careful consideration of issues of fact which arise out of the claimant's witness statement. In the absence of those answers having been provided, this court is not inclined to accept such questionable evidence of the claimant, as being credible. The criminal case of **Henriques and Carr v R** – [1990] 39 W.I.R. 253, which is a Privy Council judgment from Jamaica, can, to this court's mind, at least insofar as how the credibility of a witness' deposition, admitted as hearsay evidence at trial, ought to be considered by the relevant fact – finding tribunal, equally be applied in civil cases wherein, in particular, witness statements are admitted at trial, as hearsay evidence.

[26] Furthermore, to my mind, even though the defence has not objected to the admission into evidence, of the hearsay evidence of the claimant and in particular in that regard, the claimant's witness statement, nonetheless, this should not be taken as being tantamount to the defence having accepted as credible, that which has been set out in that witness statement, as the witness' evidence. Oral evidence as provided to a court during trial, which has not been cross-examined upon, may be viewed by the relevant tribunal of fact, as having been accepted by the opposing party. See: **Murphy on Evidence** (*op. cit*.), at paragraph 17.3, pp. 603 and 604. The situation is different though, legally, in a circumstance wherein, on a matter of admissibility of evidence, there has been no objection to the admissibility of that evidence. Failure to object to the admissibility of evidence, cannot serve to preclude a party who has not so objected,

from challenging the credibility of that evidence, once the same has been admitted. In the case at hand, the only challenge that could have properly been made to the credibility of the claimant's evidence, would have had to have been made by means of defence counsel's closing submissions. This is precisely what the defence counsel, in the case at hand, has done. She did not challenge that evidence's admissibility. She could have done so, had she wished, pursuant to the provisions of **Section 31E (3) and (4) of the Evidence Act**. Her failure to have so done though, is not, this court now emphasizes and repeats for that purpose, to be equated with either an implicit or explicit acceptance that any aspect of such evidence, other than as to matters earlier admitted in the defendant's statement of case, is truthful and thus, ought to be accepted and acted on by the trial court, on that basis.

[27] There is just one final point which this court wishes to make, solely for the sake of completeness, arising from the failure of the defence to lead any evidence at trial, even though witness statements were both filed and served, on the defendant's behalf. It is that, if a party wishes to rely on the evidence of a witness who has made a witness statement, then, that party must either call that witness to give evidence, unless the court orders otherwise, or that party puts that statement in, as hearsay evidence. See **rule 29.8(1) of the CPR**. In the case at hand, the defence, at least as at the time when they were required, if they had any evidence, to place same before the court by a proper means, chose not to exercise that option. All that this would mean therefore, is that the defendant would be precluded from relying on the evidence as contained in either of the witness statements that were filed and served on the defendant's behalf. Furthermore, the **CPR** makes specific provision as to what may transpire, in circumstances where a party who has served a witness statement, does not either intend to call that witness to testify at the trial, or to put that witness statement in as hearsay evidence. In such a circumstance, any other party to the claim, could have put that witness statement in as hearsay evidence. See **rule 29.8(3) of the CPR**. This makes it all the more apparent to this court, that the failure to lead evidence, whether from the witness stand, or by way of hearsay, from witnesses who have provided witness statements to the court, cannot and should not, in and of itself, be sufficient to justify this court in either striking out the statement of case of the party who has failed to lead such evidence, or to, on that basis, award judgment in favour of the party who has

actually led evidence at trial, this particularly not so, in circumstances wherein the burden of proof of the claim which was filed, rests squarely on the claimant's shoulders, as is the case here.

Assault

[28] The claimant has given no evidence that he was ever put in fear of the immediate infliction upon him, by any of the policemen with whom he had the confrontation on February 19, 2004, of an unlawful touching of his person, at least insofar as the holding of his pants waist, or the hitting the him in his mouth, or the throwing of the stone at him, all as alleged by the claimant, are concerned. In the claimant's amended particulars of claim, he has alleged that he was assaulted, but provided no particulars whatsoever as to what it was that the defendant's servants or agents did, in relation to him, on the relevant night, which allegedly constituted that assault. He has not alleged in his amended particulars of claim that he was put in apprehension, by the actions of the defendant's servants or agents, of the immediate and unlawful touching of his person by either of those servants or agents of the defendant, without his consent. In addition, he has not specified same in his witness statement either. Since the burden of proof in that regard, rests only on his shoulders, he needed to have, at the very least, led evidence from which appropriate reasonable inferences as to his having had such an apprehension as to the touching of his person, in terms of the holding on to his pants waist, by the defendant's servants or agents, could properly be drawn by this court. Reasonable inferences can only properly be drawn by a fact finder in a court of law, based on proven facts, as distinct from speculation. In the absence therefore, of such proven facts, as to any apprehension of the claimant, in relation to any immediate unlawful touching of his person by a servant or agent of the defendant, the claimant's claim for damages for assault, must and does, fail.

Battery

[29] No independent evidence exists from the hospital where Mr. Myles attended on the night when he was allegedly hit in his mouth by one of the defendant's servants or agents, after he had been stopped by one of them while he was then riding his bicycle on Knutsford Blvd. without a light, at about 9:00 p.m. on February 19, 2004, to confirm that Mr. Myles even complained about having been hit in his mouth, much less that, as

he has alleged, he was hit so hard in his mouth by the police officer, that it caused his top denture to break into four pieces and also caused extensive bleeding in his mouth.

[30] This casts serious doubt upon the entire evidence of Mr. Myles as regards his having allegedly been assaulted and/or battered by the defendant's servants or agents on February 19, 2004. It casts serious doubt because, this court has concluded that the allegation as made in that regard, that is, in terms of Mr. Myles having been hit in his mouth by a police officer on the night in question, is entirely fabricated. It should be noted that although there exists evidence that the claimant purchased dentures after February 19, 2004, this cannot, in and of itself, assist the claimant in proving that Mr. Myles' denture which was allegedly broken into four pieces, as a consequence of his having been forcibly hit in his mouth by a police officer, was in fact broken in that way, or that it was broken by the defendant's servants or agents. Interestingly enough, there exists no evidence that Mr. Myles ever showed to anyone, on the night in question, or for that matter, on any other night, his allegedly broken dentures. Interestingly enough also, Mr. Myles has certified in his witness statement, that it was his 'top denture' that was broken into four pieces as a consequence of his having been hit in his mouth by a police officer and that he put those four pieces in his pocket, after same had been broken. Nonetheless, in his statement to the Police Complaints Authority, as given on February 23, 2004, Mr. Myles stated:

> *'Whilst one of them hold me on the front of my pants waist and the other one used his hand and hit me on my mouth causing **my dentures** (highlighted for emphasis only) to break into four pieces and blood started to come from my mouth. I then spit out the dentures that were broken and put them in my pocket.'*

Also interesting to note, is that the claimant, after February 19, 2004, purchased new **dentures**, this even though, in his witness statement, he was very specific in stating that it was **his top denture** that was broken arising from his having been hit in the mouth, this as distinct from his 'dentures' – as he had alleged in his statement to the Police Complaints Authority.

[31] This court does not believe that Mr. Myles' pants waist was held onto by any of the defendant's servants or agents on the relevant night. The allegation that the two police officers, on that night, individually or collectively, held on to his pants waist and then boxed him in his mouth, after asking him – '*Hey bwoy, how you a talk to police so*?' and then just let the claimant go about his business, if he had then wished to do so, is, to put it simply, quite incredible, especially since this occurred on Knutsford Boulevard at 9:00 p.m. and according to the claimant's own evidence as is set out in paragraph 2 of his witness statement, *'at that time of night, there were several persons on the road as this area has a very active nightlife.'* In addition, these officers were, according to the claimants, then wearing red seam uniform and also, it seems, had their constable number disclosed in some way. This court so concludes, because, in his statement to the Police Complaints Authority, Mr. Myles disclosed that the officer who hit him with the stone is number 9661. Why then, would these officers have committed such acts, likely in full view of others on a busy main road and added to that, then just have begun to walk away and at the same time, then leave Mr. Myles alone, as though such actions, if they had indeed carried them out as alleged by the claimant, were quite normal and entirely unremarkable in any respect? This court does not at all believe Mr. Myles' evidence in that regard.

[32] The claimant has also claimed damages for battery, as a consequence of Mr. Myles having allegedly been hit by a stone which was allegedly thrown at him by one of the two police officers who had first interacted with him while he was riding along Knutsford Boulevard on the relevant night. It is alleged that this stone was thrown at him after he had been let go of, by the police officer who had initially held on to him by the front of his pants waist. Following on his having allegedly been so let go, the two officers – one of whom had shortly before, been holding onto him by his pants waist and the other of whom had, whilst he was being so held onto, slapped him on his mouth, thereby causing injury to him and bleeding of his mouth and damage to either a denture or dentures of his. These two officers were, according to Mr. Myles, 'armed' at that time (See paragraph 3 of Mr. Myles' witness statement). Having gone through what would undoubtedly, if it had indeed occurred in the way that Mr. Myles' witness statement, as untested by cross-examination, states that it did, have been a frightening experience, nonetheless, the claimant would have this court believe, as per his witness statement,

that he then walked behind those two armed officers. He states that while walking behind them, he was pushing his bicycle and his mouth was then, still 'dripping with blood.' He asked those officers, at least three times – '*Boss a wha mi do yu*?' to be treated in this vicious manner. According to the claimant, the officers did not respond. Then, he alleges, that, the officer who had 'draped' him and whom he now knows to be Constable Forbes, asked – '*Hey bwoy wha you a follow police for? Stop follow police. 'He then picked up a stone and threw it at me*.' The stone allegedly hit his left hand, resulting in a fracture and bruising. The said police officers then left and went through the car park. (Paragraph 5 of Mr. Myles' witness statement.)

[33] Whilst it is true and indeed corroborated by independent medical evidence that Mr. Myles' finger was fractured, that evidence, in and of itself, is not sufficient to enable the claimant to prove as against the defendant, the tort of battery. The claimant also needed to prove that Mr. Myles' finger was fractured as a consequence of the actions of the defendant's servant or agent, as he has alleged and that the same was caused without any reasonable or probable cause. In that regard he has alleged that when the relevant police officer had motioned him to stop – this while he was riding his bicycle on Knutsford Boulevard at about 9:00 p.m. on the relevant night, he had stopped the bicycle and remained seated on it. At that time, one of the two police officers who were then together, came over to the claimant and 'draped him' in the front of his pants waist and then asked – '*Hey bwoy wha you have pon you*?' Mr. Myles' evidence, as provided to this court solely by means of his witness statement, which was admitted into evidence without objection from the defence, as a hearsay statement, is that he then came off of his bicycle and help up his shirt to show that he in fact had nothing on him and he then told the officer – ' *mi no have nutting on me*.' According to Mr. Myles, while the first officer was still 'draping' him by his pants waist, the other officer said to him – '*Hey bwoy how you a talk to police so*?' and used his hand and slap him on his mouth with such force that it caused his top denture to break into four pieces and also caused extensive bleeding in his mouth. He then continues his evidence by stating that, 'After the slap the first police officer let me go. I spit out the pieces of my dentures in my hand. The officers began to leave by walking off. I walked behind the officers, pushing the bicycle, my mouth still dripping with blood and asked at least three times 'boss a wha mi do yu?' to be treated in this vicious manner. The officer did not respond. The

officer who had draped me and whose number was 9661 and I now know to be Constable Forbes asked, '*Hey bwoy wha you a follow police for? Stop follow police.' 'He then picked up a stone and threw it at me. The stone hit my left hand, resulting in a fracture and bruising. They then left and went through a car park*.'

[34] This court has earlier set out in detail, why it disbelieves Mr. Myles' evidence as regards the series of events as given in written evidence by the claimant, in respect of his mouth having allegedly been slapped and his dentures thereby having been cracked and his mouth having bled to the point whereby, while he was allegedly walking behind the two officers, these being the same two officers who had respectively, 'draped him up' by the front of his pants waist and the other of whom had, whilst that 'draping up' was still ongoing, slapped him in his mouth so hard that it caused his mouth to bleed and his top denture to break into four pieces, and thereafter, while he was allegedly freely walking behind the same two officers supposedly trying to find out what he had done to them, to have been treated by them in such a vicious manner, his mouth was then, 'still dripping with blood.'

[35] Equally, this court disbelieves Mr. Myles' written and untested evidence, albeit also, uncontested evidence, as regards how it is that one of his fingers of his left hand, got fractured. The claimant had, throughout this trial, resting on the words as set out in the witness statement of Mr. Myles, considered in the context of the claimant's amended particulars of claim, the burden of proof in that regard. It was not at all for the defendant to establish by means of evidence led at trial, how Mr. Myles' finger got fractured. In that regard, whilst the claimant did place before this court as evidence which it has carefully considered, independent medical evidence to prove the fracture of one of the fingers of Mr. Myles' left hand, that medical evidence does not at all assist the claimant in independently establishing the means by which the said fracture was caused to Mr. Myles. In other words, the medical report prepared and admitted into evidence in relation to Mr. Myles' injuries, whilst setting out therein, that which was reported to medical personnel who prepared the report, by the claimant, as to the cause of the fracture of one of his left fingers, has not independently confirmed that the said fracture of that finger, either could have been, or better yet for the claimant (if possible),

was likely caused by the incident which the claimant stated to medical personnel, as having been the cause thereof.

[36] The claimant would, as far as this court is concerned, have needed such independent medical evidence to have confirmed same, since the account as given by Mr. Myles, in terms of what led to his finger having been fractured, is almost entirely incredible, to put it mildly. It must not be forgotten that according to the claimant's written evidence, those two police officers were, at, the material time, 'armed.' If they had collectively, one after the other, 'draped him up' by the front of his pants waist and also slapped him on mouth – this at a time of night when there were several persons on a busy main road – Knutsford Boulevard, it is clear that those police officers would therefore have been entirely unperturbed that there were several persons on the road at that time and that, as they were in uniform they could certainly at least, be readily identified either as being members of the Jamaica Constabulary Force, or the Island Special Constabulary Force. Why then, would one of them have only further responded to the claimant, who was then, if his account of events is to be believed, intent on pursuing the matter further, by throwing a stone at him? Why would they not then and there, have either used the weapons with which they were then 'armed', to attack him, or at least, arrest him, unlawfully, at that stage? Why would one of them have merely thrown a stone at him, albeit that according to Mr. Myles, the throwing of same did cause him to suffer a cut on his left finger as well as bruising and a fracture of that finger? Why then would the officer who had allegedly thrown that stone at Mr. Myles, along with the other officer who was then along with him, have merely thereafter, walked away through a car park? This court has not been able to discern any reasonable answers to any of these questions and really has set them out herein, for rhetorical purposes only. This court does not accept Mr. Myles' version of events which led to one of his left fingers having been cut, bruised and fractured. This court therefore, just as with the alleged injury caused to Mr. Myles' mouth, has determined that the claimant's claim for damages for battery, has not been proven, even on a balance of probabilities. To the contrary, this court takes the view that, firstly, Mr. Myles' mouth was not slapped as he has alleged, nor was his pants waist held onto as he has alleged, nor did one of his left fingers get cut, bruised and fractured due to the actions of one of the two police officers as he has alleged. In other words, to put it as

simply and as mildly as possible, the claimant has completely failed to prove his claim for damages for battery.

False Imprisonment

[37] Mr. Myles has alleged that he was falsely imprisoned. He has though, also accepted that when he was first halted by one of the two police officers who had signalled him to stop, this while he was then riding his bicycle along Knutsford Boulevard, he was then also riding without lights. Riding a bicycle at night on a main road, without lights is a summary conviction offence. See **Sections 26(21) and 27 of the Main Roads Act**. There is no doubt in this court's mind, that this offence would have been committed in the plain view of the arresting officer. **Section 28(1) of the Main Roads Act** permits a constable to arrest without warrant, any person, for such an offence committed in his plain sight. See however, **Section 28(3) of the Main Roads Act**, which apparently was not complied with by either of the officers who undoubtedly, jointly caused the claimant to have been arrested without warrant. The defence has led no evidence and thus there exists no evidence which would entitle this court to conclude either that Mr. Myles had assaulted either of those police officers in any way, or that he had committed a breach of the peace in their plain sight, or that he had disobeyed a police traffic signal in any way. Accordingly, this court concludes that Mr. Myles was unlawfully arrested by a Crown servant or agent, on the facts of this case, and that same was done without reasonable or probable cause. Even though Mr. Myles was indeed riding on a main road without a light, on the night in question, the evidence which exists, enables this court to draw the reasonable inference that at no time was he asked by either of the two police officers to disclose his name.

[38] Mr. Myles has stated in his witness statement, that when he was riding on Knutsford Boulevard, on February 19, 2004, on his bicycle, which then had 'no lights'. The defence counsel has urged this court to infer that when the claimant as set out in his witness statement, there stated, that he was riding with 'no lights', what he meant by 'no lights', was that he was then riding without any reflectors on his bicycle. This court is not minded to draw such an inference, since, to this court's mind, it is not a reasonable inference which can properly be drawn in the circumstances of this case.

[39] Furthermore, even if the defendant had reasonable and probable cause to justify the arrest of Mr. Myles, by the Crown's servants or agents, under the **Main Roads Act**, this would not serve to have justified Mr. Myles arrest pursuant to the provisions of the **Road Traffic Act**. In that regard, it ought not to be forgotten, that Mr. Myles was never charged with any offence under the **Main Roads Act**. He was instead, as the Magistrate Court's record has made clear to this court, charged with a breach of the **Road Traffic Act**. As Mr. Myles had been, at the material time, riding a bicycle at night 'without light', it was not, in any event, lawful and/or proper for him to have been criminally charged, pursuant to the provisions of the **Road Traffic Act**. This is because, whilst the **Road Traffic Act** has an offence of riding a 'carriage', which is defined in that Act, as including, *inter alia*, a bicycle, at night, without a reflector both to the front and the back thereof, it is not an offence under that Act, to ride a bicycle at night, 'without lights', which is what Mr. Myles has admitted to having done.

[40] It should be noted that Mr. Myles' evidence makes it clear that he was treated humanely during the time while he was in police custody. Efforts were made by a police officer and assistance was provided to Mr. Myles, to enable him to obtain the assistance of someone who went from Mr. Myles' home to the Half Way Tree Police Station, along with a senior police officer and Mr. Myles, who transported Mr. Myles to his home and thereafter, Mr. Myles and the person who bailed him, to the Half Way Tree Police Station. In addition, during that time, he was taken to the Kingston Public Hospital for medical treatment and he was so taken, not only on the night of February 19, 2004 – when he was arrested, but also, on the following day, when he returned there as required, for follow-up treatment. It was at the Half Way Police Station on February 20, 2004, that Mr. Myles received bail, even before he went to court. Additionally, it cannot be forgotten for the purpose of assessing damages, that it was, partially at least, because of Mr. Myles' unlawful action, in riding on the main road on that eventful night, without light, which, at least, led to Mr. Myles' passage along that road on that night, having initially, been understandably and lawfully, halted.

[41] Additionally, as regards damages, the claimant, although having claimed for exemplary damages, would not be entitled to recover same. Mr. Myles died on February 19, 2004, this having been after the tort of false imprisonment was committed

upon him by the defendant's servants or agents. There is no evidence that he died as a consequence of the commission of either that tort, or any other alleged tort arising from which the claimant is pursuing this claim. Were it not therefore, for the provisions of the **Law Reform (Miscellaneous Provisions) Act**, his claim, which was begun with the filing of his claim form and particulars of claim, before he died, would have concluded as of the date of his death and could not be revived. See: **Winfield and Jolowicz on Tort**, 13th ed. [1989], at pp. 643 and 644. The **Law Reform (Miscellaneous Provisions) Act of Jamaica**, which is *in pari materia* with the English Act of the same name, as was passed into Law in England in 1934, came into law, so as to remedy that which was deemed at the time to be a deficiency of the common law. This Act, both in England and in Jamaica, specifies that all causes of action subsisting against or vested in any person on his death, shall, as the case may, survive either against, or for the benefit of his estate. What this Act does therefore, amongst other things, is to provide for the survival of all causes of action subsisting when either the tortfeasor or injured person dies. See **Section 2 of Jamaica's Law Reform (Miscellaneous Provisions) Act**. That Act though, also expressly provides that where the 'injured person' – this being the person who has the cause of action vested in him as at the date of his death, has died, the damages recoverable for the benefit of the estate, shall not include any exemplary damages. See **Section 2(2)(a) of the Law Reform (Miscellaneous Provisions) Act**. Thus, the claimant's claim for exemplary damages in the case at hand, cannot, as things now stand, properly succeed and thus, on that basis alone, this court will make no award for same.

[42] This court must give consideration to other awards for damages for false imprisonment as made in other cases which involve police officers as defendants, in order to best be able to make a fair and proper assessment of the damages award that ought to be made in the claimant's favour, in the case at hand.

[43] As regards the claimant's claim for aggravated damages, this court will make no award for same. The court is empowered to make an award for aggravated damages, in circumstances wherein, on assessing general damages, this court holds the view that where injury to the claimant's feelings and the mental distress that he has suffered, arising from the legal wrong which was committed in relation to him, by the defendant,

have been worsened by the bad motive, or wilful conduct of the defendant, then, `this court may, in such a circumstance, award in the claimant's favour and thus, as against the defendant, aggravated damages, albeit that such is still to be awarded as compensation, rather than as punishment. This court does not hold the view that such an award would be appropriate, arising from the tort of false imprisonment committed in relation to the claimant in the case at hand, since this court is of the view, that whilst the police officer who laid the charges against the claimant and who effected the claimant's arrest, did so erroneously as a matter of law and thus, also without reasonable or probable cause – as was alleged by the claimant, did so as a consequence of an evil motive, or in other words, maliciously, this not having been alleged by the claimant, insofar as the claimant's claim for damages for false imprisonment is concerned. In addition, the circumstances surrounding the claimant's imprisonment during the entire period of time within which such continued, do not justify this court in making any award for aggravated damages, in the claimant's favour.

[44] In respect of special damages, the claimant has claimed for loss of income, but has led absolutely no evidence whatsoever, as to same. In addition, he has claimed for the cost of a medical report and for the replacement of Mr. Myles' dentures. These latter-mentioned items of special damages claimed for, could only properly be awarded by this court in the claimant's favour, of this court were to conclude that the claimant was indeed the subject of a battery, at the hands of the defendant's servants and/or agents. Under and in respect of the claim for damages for false imprisonment therefore, this court will make no award for special damages, this because, Mr. Myles' false imprisonment did not necessitate his having obtained either a medical report, or new dentures.

[45] What then, would be the appropriate award to be made by this court, as general damages, arising from Mr. Myles' false imprisonment by the defendant's servants or agents? This is very difficult to assess, since there is no evidence as to the precise length of time during which, Mr. Myles was under arrest. We do know though, that the relevant incident involving Mr. Myles and the two police officers, occurred at approximately 9:00 p.m. on February 19, 2004. We also know that Mr. Myles remained in police custody and thus, police escort, even while he was taken to and being

attended to at the Kingston Public Hospital, as well as after he returned from the hospital, to the New Kingston police post. From there, he remained under police custody while escorted to and from his home, which is where he was taken, in order to enable him to locate someone who could stand as surety for him, when he was granted 'police bail', at the police post. All in all therefore, this court, estimates that from the time when Mr. Myles was first, unlawfully detained, this of course, having been from at least a little time before he was actually criminally charged, until when he would have been granted and met, via his surety, the police bail which was offered to him, he would have spent approximately six hours, being falsely imprisoned. That false imprisonment was carried out in a police station, but this court heard no evidence as regards whether anyone other than police officers and the claimant, were present there, at that time. Mr. Myles' imprisonment though, would nonetheless, undoubtedly have been made known to the wider public, at the time when he was escorted to and from the hospital, as also, while he remained in custody, or in other words, 'under escort' at the hospital. In addition, as earlier mentioned, this court can and does draw the reasonable inference that a moral stigma would have 'surrounded' the claimant, by virtue of his having been arrested by the police and his having remained under such arrest for a period of six hours. The good thing though, is that the evidence, as already stated in these reasons, makes it clear that Mr. Myles was at all times while under arrest, treated humanely by the police officers who, from that point onwards, attended to him. In the case: **Rayon Wilson and Attorney General and Detective Meeks** – Claim No. 2006 HCV 3368, Mr. Myles was awarded, just two years ago, the sum of $350,000.00 per day, arising from his having been falsely imprisoned by the defendants, over a period of seven days. When that award is updated using the September, 2013 Consumer Price Index (CPI), of 207.2, the award would be $60,585.00 per day. In the case at hand, this court has concluded that the claimant was detained for a quarter of a day (six hours). In the circumstances, this court awards to the claimant as general damages for false imprisonment, the sum of $20,000.00 with interest at 6% from as of February 19, 2004, until November 15, 2013.

[46] There is one final issue which should be addressed for the purpose of resolving all of the pertinent issues as regards this claim. It is as regards the value or lack of value, (as the case may be) of Mr. Myles' report made within days of the relevant

incident involving himself and the Crown's servants or agents, which, according to him, resulted in his having been battered, falsely imprisoned and maliciously prosecuted.

[47] This court is of the considered opinion that evidence of what was stated by Mr. Myles in that report, although admitted as hearsay evidence and thus, was being relied on by the claimant, for the purpose of proving the truth of its contents, is not capable of being utilized by this court for that purpose, as in that regard, it is within the category of what is recognized by the law of evidence, as being a 'previous consistent statement.' As a general rule, previous consistent statements are not admissible for the purpose of proving the truth of the contents of that statement. Whilst there are a few exceptions that exist to that general rule, one of which would be that such a statement could be relied on to rebut on allegation of recent fabrication, no such allegation was, or for that matter, could have been put to the claimant at trial, since by then, the claimant was deceased. None of the other exceptions to the aforementioned general rule, which need not and will not be stated in these reasons for judgment, need be referred to specifically.

[48] The reason for the general rule, is that a party cannot be permitted to strengthen his case by making evidence for himself. In other words, a party cannot, by means of repeating this allegation to several persons, time and time again, use as evidence in support of his claim, the accounts of those persons, as regards what they have been told by that party. All of that evidence comes from that party himself and thus, cannot be used in support of his account as provided in court. Thus, although it was admitted as hearsay evidence during the trial of this claim, it, in reality, could serve no useful purpose whatsoever, insofar as support of the claimant's claim is concerned. This court though, was entitled to and did in fact take into account, the few inconsistencies between the claimant's account as given in his witness statement, or as set out in his statement of case, as against that which was stated in the claimant's report to the Police Public Complaints Authority. Those inconsistencies are what is known as previous inconsistent statements and are admissible for the limited purpose, not of proving the truth of what was stated in that previous statement, but instead, for the purpose of proving the inconsistency, which, once proven, may be taken by the fact – finding tribunal, as impingingly negatively on the relevant party's credibility. For more overall

discussion on the matter of precious consistent and inconsistent statements and the evidentiary value of either, see: **Murphy on Evidence** (op.cit.), at pp. 565-568.

The Court's Orders

[49] This court has, bearing in mind all of that which has been set out above, made the following orders:

(1) Judgment on the claimant's claim for damages for malicious prosecution, assault and battery, is awarded in favour of the defendant; and

(2) Judgment on the claimant's claim for damages for false imprisonment is awarded in favour of the claimant and the claimant is awarded the sum of $20,000.00 with interest at the rate of 6%, from as of February 19, 2004 (date of incident) to November 15, 2013 (date of this judgment); and

(3) Costs of the claim are to be borne equally between the parties; and

(4) The defendant shall file and serve this order.

Note: This court had, when making its final judgment orders, ordered also, that: Service of the defendant's written submissions and authorities, as regards damages, is extended to November 18, 2013.

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Hon. K. Anderson, J.