

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 2000/N037

BETWEEN	HERMAN NEEDHAM	PLAINTIFF
A N D	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

Mr. Ravil Golding for Plaintiff.

Mr. Curtis Cochrane and Miss Nicole Brown for Defendant instructed by the Director of State Proceedings.

HEARD: 8th and 10th April, 2003

BROOKS, J.

In this action the Plaintiff claims Damages against the Defendant pursuant to the Crown Proceedings Act for False Imprisonment and Malicious Prosecution.

The action arises from a criminal prosecution initiated on the 3rd September, 1996 when a Constable Mowatt, a member of the Jamaica Constabulary Force arrested and charged the Plaintiff for certain offences. The Plaintiff was acquitted of these charges on 23rd June, 1999 when the prosecution offered no further evidence against him.

At the commencement of this hearing counsel for the parties informed the Court that the matter would be dealt with as a contested assessment.

The evidence in support of the claim came from the Plaintiff who testified that he was an employee of the National Commercial Bank as at 3rd September, 1996. On that day at about 9:30 a.m. he was given certain instructions (he does not say by whom) and as a result he went to the Fraud Squad at the Central Police Station.

At the Criminal Investigation Branch office of that station he was questioned by Constable Mowatt and thereafter (at about 4:00 p.m.) he was arrested and charged. After he was arrested he was taken from the Criminal Investigation Branch office and placed in an enclosed section called a "holding area". This was not a cell and he was the only person there.

He was offered bail and at about 6:00 p.m. that day he took up his bail and was released.

He testified that thereafter he went to Court on five or six occasions in respect of the charges. The police officer only attended court once up to that date and the case was eventually adjourned *sine die* on 15th November, 1996.

That situation proved unsatisfactory and the Plaintiff applied to the Court for the case to be relisted and for No Order to be made for an indictment. As a result summonses were issued for him to attend the Half Way Tree Resident Magistrate's Court, on the same charges, on 28th February, 1997. The prosecution did not accede to his request and the case

proceeded to trial. It eventually ended in his acquittal as mentioned above. During the period up to acquittal he attended Court on some twenty five occasions, by his estimate, going to Court approximately once per month. He said that the police officer Constable Mowatt never attended Court during this period.

During the entire period from the date of arrest to acquittal Mr. Needham's employers, who were the virtual complainants in the prosecution, had suspended him from duty without pay. He was never reinstated to duty and in October, 1999 his post was by mutual agreement treated as being made redundant and he received a payment from the bank representing his salary to 31st August, 1999 as well as other matters. He released the bank from all liability and they parted company.

That was however not the end of Mr. Needham's woes.

He testified that he obtained employment at a Credit Union at a salary which was \$230,000.00 per annum less than the salary which he was earning at the bank before his arrest. He said that at first he was afraid to apply for employment in the financial sector because the information of his arrest would be a significant handicap to the prospect of employment in that area. He says that while working at the Credit Union he applied for employment at three banks but received no reply.

His other attempt at securing other employment in the financial sector brought a request that a finger print check be done. This caused him not to pursue the matter. Mr. Golding asked that the Court infer that this result was a direct consequence of the wrongful prosecution, but the documents (Exhibits 4 and 5) on which he relies are at best equivocal in this regard.

Claim for Special Damages

As a result of his being forced to accept remuneration at a clerical level when he was previously at the supervisory level, he claims lost earnings at the rate of \$230,000.00 per annum for the period 1st September, 1999 (the date to which he was paid by the bank) to the date of judgment. Mr. Cochrane submitted that if any figure was awarded it ought to be adjusted for income tax. I accept that submission and am of the view that the sum of \$603,791.07 would be the appropriate award for lost earnings which are a direct result of the wrongful action of the defendant's servant.

Mr. Needham also claims the sum of approximately \$300,000.00 being the sum he paid for one year's tuition at the Jamaica Institute of Bankers and at the University of Technology. He testified that had he not been arrested and suspended by the bank he would not have had to pay that sum as National Commercial Bank would have paid it as part of a scholarship arrangement which he had with it. He produced no receipts to

show the payment but Mr. Golding has asked the Court to find that the sum is reasonable since the bank wrote off the sum of \$635,075.81 which the Plaintiff testified was two years of the three years' tuition at the Jamaica Institute of Bankers and at the University of Technology.

Mr. Cochrane submitted that the Court should disallow the claim as not being strictly proved. He relied on the authority of Renford Facey v. Constable Hall and the Attorney General (1994) 31 JLR 518 in support of the submission. I note in this regard that the Plaintiff has produced a certificate (Exhibit 8) that he has passed the Associate-ship examinations prescribed by the council of the Chartered Institute of Bankers. This certificate is issued out of London and not by either of the institutions at which Mr. Needham studied.

In light of the amount of money involved, the fact that the scholarship included a number of factors of which tuition was only one, and the fact that this was a transaction with established educational institutions I would expect that receipts would have been provided to the Plaintiff for the payments if they had been made. If he had lost them he certainly would have been able to secure copies to be able to satisfy the Court to the well established standard set by "old and intelligible principles" (per Bowen L.J. in Radcliffe v Evans [1892] 2 OBD524 at p. 533). I am not prepared to

accept the Plaintiff's say-so as proof of special damages in these circumstances. The claim of \$300,000.00 for tuition is therefore disallowed.

The final item of Special Damages to be discussed is a claim for \$200,000.00 as legal fees to defend the Plaintiff against the wrongful prosecution. This figure has been supported by receipts and was not opposed by the attorney for the Defendant. It will therefore be allowed as proved.

General Damages

Mr. Golding argued that awards should be made for false imprisonment, malicious prosecution, handicap on the labour market and aggravated damages. He argued that a global figure to cover the heads of malicious prosecution and aggravated damages could be awarded based on a recent precedent set by the Court of Appeal in the case of Ellis v. Attorney General SCCA 37/2001 (delivered 11/6/2002). I shall address that submission later in this judgment.

In the Ellis case the circumstances were very similar to the instant case. The Plaintiff, a forester, a Justice of the Peace and a prominent member of his community was arrested and detained for some seven hours. Mr. Ellis was a much older and more socially exposed man than Mr. Needham and so the indignity, mental suffering, disgrace and humiliation

with the attendant loss of social status may have had a greater impact on Mr. Ellis. Yet Mr. Needham testified that when he was arrested he felt “confused”. His testimony is that he felt “rejected by my friends. I didn’t know what to do, I felt like I was alone in the world and I reached the point where I felt like I was suicidal.”

Clearly the impact on him being a banker, for which absolute trust is essential, was severe, and so I am prepared to award to him the same figure awarded to Mr. Ellis for general damages for false imprisonment namely \$100,000.00.

Mr. Cochrane had submitted that the award should have been \$200,000 to \$250,000.00 on the basis that he was of the view that the sum to be awarded for damages for malicious prosecution should be fairly low. If I have understood him correctly, I am not agreement with that approach.

The cases cited in respect in of the claim for malicious prosecutions were as follows:

- (a) The *Ellis* case (supra)
- (b) *Colin Henry vs. The Attorney General (1993) 30 J.L.R. 227*
- (c) *Renford Facey vs. Hall* (supra)

The length of time for which Mr. Needham was facing these charges is very relevant. I therefore considered whether any distinction should have

been drawn between the period up to the point of the case being adjourned *sine die* and that when the matter was reinstated by summons and pursued by the Crown through to trial. The latter action would be the result of the ministerial action of the Clerk of Courts or other prosecuting officer and, that action is not a part of the Plaintiff's pleading.

I however am guided by the learned authors of Clerk and Lindsell on Torts (14th Edition) at paragraph 1890 where they opine that:

“If an actual charge is made, though in an indefinite form and as a mere matter of suspicion and hearsay, a prosecution is thereby instituted, and the prosecutor is answerable for the ulterior consequences, and it is not open to him to say that they were due to the mistake or indiscretion of the tribunal which he has put in motion.”

I am prepared to find that there is no real distinction between a case interrupted, as this one was, and one which did not have such an intervening hiatus, as in both cases, without more, the prosecuting official is relying on the charges laid by the investigating officer.

I therefore find that the period up to trial remains a direct result of the wrongful action of the police officer.

In light of the extensive time involved in resolving the matter, the effect on Mr. Needham's career in his chosen field, the indignity, humiliation and disgrace caused him by the fact of having those charges

brought against him, I am of the view that the Facey case is not relevant as an appropriate guide.

In the Colin Henry case an award of \$150,000.00 was made in 1993 for a single instance of false imprisonment and malicious prosecution. That award would be worth in the region of \$550,000.00 today. Mr. Henry's first encounter with the police officer and its resultant Court action was found not to have affected his career and was also short by comparison to that of Mr. Needham.

I have also relied on, for guidance, the case of Linnett Vassell and Cyril Vassel vs. Attorney General C.L. 1984/V013 (delivered 19th January, 1996) in which Mrs. Vassell, was awarded in January, 1996 the sum of \$600,000.00 as a global award for false imprisonment and malicious prosecution where she was incarcerated for approximately two weeks before she was brought to Court. Two months were to elapse before the charges against her were dismissed. The equivalent of that award in today's money is approximately \$980,000.00. Mr. Needham's Court charges stretched over almost three years. Again therefore Mr. Ellis' case seems to be a closer guide in terms of the status of the plaintiff and the length of time the charges were pending.

In the circumstances I shall adopt the approach of the Court of Appeal and consider the aggravating circumstances in this case.

It appears that the police officer attended court only once throughout the duration of the matter. On one of the early dates that the matter was before the Court, the officer was ordered to produce a particular statement on the next occasion. He did not do so and neither did he attend the later sitting. It was then that the case was adjourned *sine die*.

Mr. Golding submitted that the failure of the Clerk of Courts to request that No Order for indictment be made, was an aggravating factor, but I do not agree. The Clerk of Courts would have been relying on what was presented to him by the investigator.

No evidence was led as to the reason for the protracted handling of the matter and that time period must be considered in considering the damages for the malicious prosecution.

The Court of Appeal, I am informed, awarded a global figure of \$2,000,000.00 in respect of the injury suffered by Mr. Ellis in respect of the malicious prosecution and the factors aggravating same. The details of the award are not available to me but it would seem that Mr. Ellis being an older man with more standing in his community would be entitled to greater damages than Mr. Needham who is not yet forty years old.

In the circumstances I find that the plaintiff is entitled to an award of \$1,500,000.00 for malicious prosecution and aggravated damages arising from the way the police officer acted.

Mr. Golding submitted that Mr. Needham should also have an award for handicap on the labour market in light of the alleged limitations in securing employment in the financial sector. No evidence had been led however that there is any substantial risk of him losing his present employment. On the contrary it appears that he is progressing with that employer. I therefore decline to make any such order.

In summary therefore since liability was admitted, judgment is awarded by consent to the plaintiff and damages are awarded as follows.

Special Damages \$ 803,791.07

Interest is awarded thereon at the rate of 6% per annum from 3rd September, 1996 to today's date.

<u>General Damages</u>	
False Imprisonment	\$ 100,000.00
Malicious Prosecution and Aggravated Damages	<u>\$1,500,000.00</u>
Total	\$1,600,000.00

Interest is awarded the total of \$1,600,000.00 at 6% per annum from the 24th March, 2000 to today's date.

It is further ordered that the Defendant provide a police report to the Plaintiff within thirty days of the date hereof without cost to the Plaintiff.

Costs of the action to the Plaintiff are agreed at \$76,000.00 pursuant to Part 65 of the Civil Procedure Rules 2002.