[2014] JMSC CIV. 224

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2006HCV03273

BETWEEN	**CLEVELAND VASSEL**	**CLAIMANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**1st DEFENDANT**
AND	**CONSTABLE HUTCHINSON**	**2nd DEFENDANT**

Cavelle Johnston, Teri-Ann Guyah for Claimant instructed by Townsend Whyte & Porter

Cheryl Lee Bolton for Defendants instructed by the Director of State Proceedings

Heard: 5th, 7th & 21st February, 2014

Tort – Malicious prosecution and false imprisonment – Assault – Whether right to arrest although search revealed no offensive weapon – Damages

Coram: David Batts, J.

[1] This Judgment was delivered orally on the 21st February 2014.Prior to the commencement of the matter, the Claimant's counsel indicated that the medical doctor was unavailable and there was no agreement on medical reports. Counsel indicated further that no application to adjourn would be made as her client instructed that she proceed without calling medical evidence. I made it

clear that the case if started would not be part heard but counsel elected to proceed with the trial.

[2] The matter has proved to be straightforward and easily resolved, the rather voluminous written submissions (and extended oral submissions) notwithstanding.

[3] Each party called only one witness. Their respective account of what transpired diverged significantly. There was very little objective scientific or documentary evidence presented. As such, the court was once again left to determine truth on a balance of probabilities in reliance largely on the view taken of demeanour credibility and candour of the parties.

[4] I will not restate the evidence or rehash the points made in cross-examination of each. Rather I will indicate very shortly my findings of fact and my reasons for arriving at these findings. The result in law will then be stated and my judgment delivered accordingly.

[5] I find as a fact that on the night of the 27th October 2003 the police at the Ocho Rios police station received a report to the effect that a person sporting a dreadlocks hairstyle had what appeared to be a firearm in his possession and was in the vicinity of the Ocho Rios market. The 2nd Defendant and 2 other police officers were dispatched to the scene. The identity of the person making the report was unknown.

[6] Upon arrival at the market, the 2nd Defendant saw the Claimant in the company of others. The Claimant is a Rastafarian and has a dreadlocked hairstyle and did have that hairstyle on the night in question. The Claimant was properly dressed. I accept as he said that he had recently returned from a trip to Europe and was wearing “Clarks shoes, jeans and a nice ganzie shirt.”

[7] The 2nd Defendant demanded that the Claimant allow himself to be searched. The Claimant complied. The search revealed no firearm weapon or illegal article or substance of any kind. The 2nd Defendant then instructed the Claimant to

proceed with him to the Ocho Rios police station and to get into the police vehicle.

[8] The Claimant refused and enquired of the police why was he being taken to the police station at night. The 2nd Defendant with the assistance of the other police officers applied force to get the Claimant into the police vehicle. This force included physical holding and handling as well as blows to the hand with a baton, this latter in order to let him release his hold on the police vehicle.

[9] I accept that persons standing around encouraged the Claimant to go into the police vehicle lest he be killed or seriously injured. I accept that when first making contact with the Claimant the 2nd Defendant said "hey bwoy come here" and that the Claimant responded, "but you don't have any manners you can look at big man and call him boy."

[10] I find it is this response in the presence and hearing of others in the market which provoked the second Defendant to not only search, but when the search was fruitless, to take the Claimant to the police station.

[11] Having arrived at the police station, I find that the Claimant's cell phone was taken from him and he was not allowed to make a call. I accept that the Claimant's continued protestations and his refusal to go into a call at the police station elicited further physical assaults.

[12] I find as a fact that the Claimant was rendered unconscious by the blows. He was placed in a cell reserved for persons considered to be of unsound mind. I accept that it was a sympathetic police officer who removed him from that cell on the 2nd day of his incarceration. On the 3rd day an inspector granted bail and assisted the Claimant to contact his daughter who attended to and did bail him.

[13] The Claimant was bailed to attend court on the 6th November 2003 and pleaded not guilty. After several hearing dates, only one of which was attended by the 2nd Defendant, the case against the Claimant was dismissed for want of prosecution. The dismissal occurred on the 9th January. 2004 (See Exhibit 1).

[14] I have arrived at these findings and preferred much of the Claimant's evidence to that of the 2nd Defendant, for several reasons.

[15] In the first place, the Claimant impressed me as a witness of truth. He gave his evidence in a manner which was forthright and impressive. Born on the 26th April 1950, there is every reason to expect that he would object to being called "bwoy." The Claimant produced his passport a (copy of which was exhibit 2) which showed he returned to Jamaica on the 8th October 2003. This supports his assertion that he had recently returned to Jamaica when the incident occurred. It also moves one to wonder why someone with the wherewithal to travel to Europe would be sleeping on the market floor, as the Defendants alleged.

[16] Exhibit 1 is a Certificate issued by the Clerk of Courts in St. Ann. The charges against the Claimant were laid on or about the 27th October 2003 but dismissed for want of prosecution on the 9th January 2004. The relatively speedy dismissal corroborates the Claimant who states that the 2nd Defendant attended court only once. It also strongly suggests that the 2nd Defendant is being untruthful when he stated that a bench warrant was issued for the Claimant's arrest after he missed court dates (see paragraph 14 of 2nd Defendant's witness statement).

[17] I also find the 2nd Defendant's account rather odd. In the first place the police attend the Ocho Rios market in response to a report that a gunman is present. This notwithstanding the 2nd Defendant would have us believe that on arrival the three of them separated. Two in one direction leaving him alone. Further upon seeing the Rastafarian on the floor, the 2nd defendant bends over him to nudge him with his pistol to see if he were alive. Such a movement would have placed the 2nd Defendant in a position to be disarmed or injured if the person on the floor was armed. It would have been more prudent and normal, for the 2nd defendant to use the toe of his boot to nudge a body on the floor. The assertion that in response to a touch the Rastafarian, turned, jumped up and shouted profanities at a uniformed police officer, is also incredible.

[18] The 2nd Defendant it is to be noted made a major departure from his witness statement. In that statement he said he used his rifle to touch the Claimant. When giving oral evidence he said it was not a rifle but a pistol as he had no rifle that night. He stated clearly in his witness statement that he had no reason for his suspicion to be aroused and his only purpose when touching the Claimant was to see if he was alive. This is also unbelievable because why then shout, "Police get up and give me a search", as he said he did.

[19] In his witness statement the 2nd defendant stated that the rastaman's appearance was such that he looked "homeless." When giving oral evidence he admitted that the Claimant was wearing Clarks shoes. The two statements I find inconsistent.

[20] On this issue of homelessness, the 2nd defendant admitted that it was his practice to incarcerate persons he considered homeless. He did this to see if they were intoxicated or insane. Ocho Rios is a resort town and I find that at the material time there was a cell at the Ocho Rios police station reserved for those inmates considered to be insane. A fact the 2nd Defendant endeavoured to deny.

[21] The 2nd Defendant maintained that the Claimant was charged with resisting arrest. The court's records (Exhibit 1) prove that was not true.

[22] Finally, the 2nd Defendant when cross-examined asserted that the Claimant was offered bail on the same night as his incarceration. He denied preventing him making a call. No explanation was proffered as to the reason why the Claimant only took up the offer of bail three days later. The Defendants did not place before the court any evidence (Station Diary, custody diary, or other material) to support this alleged offer of bail. I find the Claimant's account far more credible and probable.

[23] It leaves only to be recorded that this proud Rastafarian broke down in tears whilst being cross-examined. He did so at a point when it was suggested to him that he was not being truthful about incarceration with insane persons and

beating. Those tears appeared genuine and to my mind reflected his anguish and anger as he relived the experience.

[24] When regard is had to my findings of fact it is manifest that the 2nd Defendant had no reason to take the Claimant into custody. He had grounds for and in fact reasonable suspicion to support, a search of the Claimant. The Claimant cooperated with that search although protesting being called "bwoy." No indecent language was used by the Claimant at that point. When the search revealed no offensive weapon or contraband the 2nd Defendant and his colleagues had no further or other reason to suspect the Claimant. The 2nd Defendant admitted as much in his witness statement (see paragraphs 4 and 5). Further when commanded to go with them to the police station, the Claimant had every right to ask why and to refuse to go unless a valid reason was stated. By failing to give a reason for arrest the 2nd Defendant committed a further breach of the Claimant's constitutionally guaranteed rights. I hold that the Claimant's false imprisonment commenced with the unlawful arrest as he was forcibly placed in the police vehicle. This was compounded by the failure to consider station bail until the 29th October 2003. The application of force to effect the unlawful arrest constitutes an assault for which the Defendant is also liable. There was likewise no reasonable or probable cause for the laying of charges against the Claimant and I find that the prosecution was maliciously brought. The 2nd Defendant, I find was intent on punishing the Rastafarian Claimant for asking why was he being called "bwoy" and later why was he being arrested.

[25] On the question of damages I have considered the submissions made. My award is as follows.

Pain Suffering and Loss of Amenities

a) I accept that the Claimant was beaten with a baton at the market when being forced into the police car. I also accept that he was beaten when being forced into the cell area and was left unconscious. The Claimant has described and I

accept the pain he felt. I accept that he is no longer able to lift the same weight objects as before. I rely on the authority of ***Leeman Anderson v. Attorney General*** CLA017of 2002 (July 2004) ($4000,000 updated to $1,088,000). I discount it as Mr. Anderson had a fractured hand. **$500.000.00**

b) **False Imprisonment**

The Claimant's period of unlawful incarceration was October 27th to 30th. I rely on the authority of ***Fearon v Attorney General*** (1990) (FO46) March 2005. 3½ days incarceration $280,000 updated $692,942 or $197,983 per day. The approach is not a mathematical per diem formula. Issues such as humiliation and circumstances of discomfort are taken into account. In the instant matter Mr. Vassel was taken into custody in the presence of his friends. His humiliation was considerable. He was also placed in a cell with insane persons for a period. **$600,000.00**

c) **Malicious Prosecution**

This lasted for approximately 2 months (30th October 2003 to 9th January 2004). I rely on ***Hobbins v AG*** CL H196 (January 2007) and **Campbell v Watson** CL 385/1998 (January 2005). **$200.000.00**

d) **Aggravated Damages**

In this matter the Claimant was treated in a manner designed to punish him for being so impertinent as to question the reason for being called a "bwoy" as well as the reason for arrest. He was placed in a cell with persons of unsound mind which had faeces on the floor. This was to

further punish his resistance to the unlawful arrest. I rely on ***Sharon Greenwood v AG CL G116*** of 1999 (26th October 2005) $700,000 updated amounts to $1,567,020.15) and ***Foster v AG F/135/1997 (18th July 2004).***

$800,000.00

e) **Exemplary Damages**

The 2nd Defendant's conduct was such that it is deserving of an award to express the court's strong disapproval. The wanton abuse of authority at the market and within the lockup has to be discouraged. I rely on ***Sharon Greenwood-Henry v. AG*** (see above) $700,000 updated to $1,567.020,15) and ***Foster v AG*** (above) $90,000 updated to $@73,366. Note that in ***Maxwell Russell v AG*** 2006 HCV4025, Mangatal J declined an award under this head because the other awards were sufficiently punitive. In that case however, the officer's conduct was not as malicious as it was instinctive. The police in unmarked vehicles pulled up and said "don't move." The Claimant immediately started to run away. He was shot in the back. It was an entirely inappropriate mode of preventing flight. In the case at bar the 2nd Defendant knowingly and for no good reason beat the Claimant on more than one occasion, left him unconscious, and placed him in a cell with insane persons and denied him bail for 3 days. **$500,000.00**

f) **Lost Earning Capacity**

The Claimant seeks an award for lost earnings. He says he was unable to do construction work and hence lost $7,000 per week after the incident. He has since reverted to driving but cannot do so for extended periods. In the absence of

supporting medical or other evidence I do not, on a balance of probabilities, find this aspect of the claim proven. I accept that the injuries have reduced his attraction to a potential employer and hence affected his earning capacity. On the evidence I award 3 months lost at $7,000 per week to compensate for this loss of Earning Capacity or handicap on the labour market. **$74.000.00**

g) **Special Damages**

No award.

No evidence was led to support any of the pleaded expenses claimed.

[26] There will therefore be Judgment accordingly for the Claimant in the total amount of $2,674,000.00 General Damages. Interest will run on those damages from the 27th October 2003 to the 21st February, 2014 @3% per annum. Costs to the Claimant to be taxed if not agreed.

David Batts
Puisne Judge
21st February, 2014

Judgment was amended under the slip rule, interest will run at 3% per annum from the 27th October 2003 on $2,174.000 to the 21st February 2014.

(Because the Exemplary award is not compensatory and therefore does not attract interest from the date of injury)