

IN THE SUPREME COURT OF JUDICATURE
IN COMMON LAW
SUIT C.L 1990/W263

BETWEEN ADOLPHUS WILLIAMS PLAINTIFF

AND THE ATTORNEY GENERAL DEFENDANT

Mr. Norman Samuels for the Plaintiff.

Mrs. Arlene Ferguson-McNair and Miss K. Fisher instructed by the Director of State Proceedings for the Defendant.

Heard : October 30, November 1,2,6, 7 and 10, 2000

HARRISON J

The Action

The plaintiff is seeking damages for false imprisonment and malicious prosecution arising out of an arrest and charge for the offence of murder committed on the 14th day of March 1988 and malicious prosecution for assault occasioning actual bodily harm. However, the claims for false imprisonment and malicious prosecution for assault occasioning actual bodily harm were struck out after the defendant successfully raised a preliminary objection in law that they were barred by virtue of the provisions of section 2(1) (a) of the Public Authorities Protection Act. Mr. Samuels had attempted to oppose the application but he subsequently advised the Court that he could not resist it.

The Plaintiff's case

The evidence reveals that after the plaintiff attended Court on some sixteen (16) occasions no prima facie case was made out against him at the Preliminary Inquiry hence he was discharged on the 27th day of May 1990.

He testified that after his acquittal he was called a "murderer" by members of the public and this affected him mentally. He had lost his job as a bus driver due to his incarceration and was unable to keep several jobs due to poor returns on the buses he drove. Commuters had refused to take any bus that he drove. His friend and co-worker Linton Stewart spoke of the difficulties they encountered whenever they ply the route between St. Mary and Kingston. There were times when passengers made sudden departures from the buses upon realizing that the plaintiff was the driver.

The plaintiff told the Court that he had felt "down and all out" and felt as if he was not living. According to him, it was like no one recognized him and he had no "livelihood anymore". His cousin, Dorcas Matadeen spoke about the effects the charges had upon him and that she would try to console him at times.

He also testified that his arrest and prosecution had caused a "disruption" in his family life. His common law wife of some eighteen (18) years union and his children had moved from Preston Hill district, St. Mary, during his incarceration. Upon being released on bail he discovered that they were no longer living in the district. His house had been burnt down and entire cultivation destroyed. He found out later that they had relocated to Central Village, St. Catherine and that his children were no longer attending school. He did not join them and he had to live with an Aunt at Frontier district in St. Mary.

Dr. Franklyn Ottey, a registered medical practitioner and Consultant Psychiatrist saw and examined the plaintiff on the 12th October 1998 in order to evaluate him. He found him to be depressed and had a mild impairment of attention and concentration. He found no evidence however of thought disorder, hallucinations or delusion. He also found no evidence of impairment of orientation or memory and his intelligence seemed to have been average. In his opinion, he was suffering from a chronic adjustment disorder with a depressed mood. He opined that the initial stressor for this seemed to have been his arrest in 1988 and the events which ensued as well as his perception of unfair treatment by the police. He further stated that if the disturbance lasted for six (6) months or longer the condition became chronic. In his opinion, the plaintiff was

functioning at 65% of his overall psychological function. He was of the view that with treatment he would obviously improve but having regards to the length of time that had elapsed it was likely that he would continue to have some symptoms.

Ilna Evans, a Consultant Clinical Neuro-Psychologist told the Court that she had examined the plaintiff in October of 1998 and concluded that he was clinically depressed and had somatic depressive effects.

The Defence.

Detective Inspector Mervyn Harris was the sole witness called on behalf of the defendant. His evidence revealed that he had visited the scene of a murder at Preston Hill during the afternoon of the 14th March 1988. He had spoken to several persons including a child who was about three and one-half (3 1/2) years of age. This child was seen at the scene of the crime along with others.

He commenced investigations into a case of murder as two persons were killed on the premises of the Roman Catholic Church. The bodies were found in a caretaker's cottage.

He told the Court that he had received information that the child was the grand-daughter of the female deceased person and that she had been living at this premises with the grand mother prior to her death. Upon speaking to this child at the premises he had asked her what had happened. She walked off towards a verandah, pointed towards a house where the plaintiff resided and said "a di coolie dog lick grandma."

Insp. Harris also told the Court that from information received, he had found out that some days before the bodies were discovered that the deceased woman and the plaintiff had a dispute over a cat. He said that one person in particular had told him that he had seen the plaintiff one day at about 3:00 a:m prior to the discovery of the bodies, leaving the premises of the Catholic Church and was heading towards his house. That person had refused to give him a statement because he was afraid. He also testified

that he had learnt through his investigations that an official police report had been lodged by the female deceased person against the plaintiff. He had collected statements from some persons but others refused to give him statements.

Insp. Harris said that the plaintiff was taken into custody on the 14th March 1988 on suspicion of murder. He was not charged on this date since he was continuing with the investigations and was endeavouring to collect a statement from the 3 year old child. That statement was collected by a Woman Constable but it was not signed by the child. The woman constable had however signed a declaration as to the taking of the statement.

Some days later, the plaintiff was arrested and charged on two counts of murder. He was placed before the Resident Magistrate's Court for a preliminary examination to be held and all statements were submitted to the Court's office. He was not sure how many witnesses had deposed at the preliminary enquiry. Exhibit 1 (certified copies of the information before the court) revealed that no prima facie case was made out against the plaintiff hence he was discharged.

Assessment of the evidence and findings.

I have carefully considered and assessed the evidence and it is my considered view that the plaintiff has impressed me as an honest and forthright witness. His demeanour in the witness box was keenly observed and I must say that he was hardly shaken if at all, under cross-examination.

Insp. Harris' recollection of the events leading up to the plaintiff's acquittal was most unsatisfactory. I do agree that this incident occurred some twelve (12) years ago but as a senior officer he ought to have been more helpful when questioned about material and substantial facts. I was not impressed at all with him and his credibility was definitely affected. He told the Court in one instance that he had not deposed at the Preliminary Inquiry. When he was pressed under cross-examination and was told by Counsel that he had a certified copy of his deposition, he recanted the earlier evidence and said he

could have given evidence. He also told me that he was not sure if what he told the Court during this trial about the information he had received during the investigations, had been recorded in his statement that was submitted to the Magistrate's Court. He was unable to say where the Preliminary Inquiry was held or when the Inquiry had begun and when it ended. He could not say which of the witnesses' statements had influenced his mind when he charged the plaintiff for murder. He said he had acted upon what the child told him but he had carried out further investigations

I do believe the plaintiff when he told me that Insp. Harris informed him that if he did not tell him about the murders he would "drag out the prosecution". No wonder the plaintiff had to attend court on some sixteen occasions before the Inquiry concluded.

I bear in mind the case of Flemming v. Attorney General delivered December 18, 1989. The Court of Appeal in a judgment delivered by Carey, P. (Ag.), made this comment at p. 13 of the judgment:

"In an endeavour to show that the police had reasonable and probable cause for the arrest, learned counsel for the respondents sought to adduce hearsay evidence of what the investigating officer told the witness . . . in the course of investigation. But upon objection being taken the learned judge then disallowed the question. We think the judge was wrong. The hearsay evidence was admissible not as proof of the contents but to explain his state of mind. It was necessary in that case for the officer to show that he had reasonable and probable cause for the arrest."

It is my considered view however, that Fleming case (supra) can be distinguished from the instant facts. It is my considered view and I so hold, that Insp. Harris had no reasonable and probable cause for prosecuting the plaintiff with the offence of murder. In my view, his arrest and subsequent prosecution were based upon the utterances of a traumatized three year old child, her subsequent unsigned statement, information from an informant who was unwilling to give a statement and the further unsupported

information that the female deceased person had lodged a complaint with the police against the plaintiff.

Damages

I now turn to the issue of damages. What is an appropriate award for this malicious prosecution? The Plaintiff has pleaded at paragraph 10 of his statement of claim that he has suffered loss and damage with respect to his farm and that he has never been able to regain employment by reason of the stigma attached to the charges of murder preferred against him. He also claims that he is suffering from severe depression for which he had to seek medical attention and that he is now 35% psychologically impaired. He is also seeking an award for exemplary damages.

So far as the allegation of his inability to regain employment is concerned, it does seem as if the plaintiff has overcome that problem as the evidence has revealed that he is gainfully employed since August, 2000.

Let me deal firstly with general damages. Mr. Samuels has submitted that an award of \$2,000,000.00 would be most appropriate. He argued that the plaintiff was called a murderer wherever he went and that this had affected his feelings and dignity and that it was defamatory. He placed heavy reliance upon the case of Ley v Hamilton (1935) TLR 384, and submitted further that damages should be at large since there was damage to the fame of the plaintiff.

Mrs. Ferguson-McNair submitted on the other hand, that an award of \$150,000.00 at most would be satisfactory and if the Court considered that there were aggravating circumstances and additional sum of \$50,000.00 could be awarded. She was of the view however that this was not a case warranting the imposition of exemplary damages.

A number of factors ought to be borne in mind when it comes to make an award in a case of this nature. The effect that this charge has upon the plaintiff and the disruption of his family life are some of the factors to be taken into consideration.

The evidence has revealed that he was a family man. He would take home sweets for his children whenever he left work and his common law union of eighteen (18) years demonstrated quite clearly that there was some stability in the family. The children were all attending school before his incarceration but since their relocation they had ceased attending school. Their mother told this Court that she was no longer able to finance their schooling. Mrs. Ferguson-McNair had submitted that the loss of family life or of his family ought not to be taken into consideration. She argued that this could be regarded as an intervening act and that his common law wife had moved out of the district as persons said that she was "in league" with the plaintiff. She further submitted that there was no attempt by the plaintiff to rebuild his family life and to show that he had failed. The evidence had also revealed where one of the daughters had become pregnant shortly after she left Preston Hill and that they had all dropped out of school. Mrs. Ferguson-McNair submitted that the Court should not take these factors into consideration as they were too remote. I do agree with her on the latter submission but I must say that I will have to take into consideration the dislocation and disruption of a previously stable family life. It is quite obvious to me that destruction of a family house and of other property would drive fear in the minds of the plaintiff's family especially since he was not on hand to assist.

How should I treat the evidence in relation to the effect this prosecution has had on the mind of the plaintiff? Both Dr. Ottey and Miss Evans have found at the time of examination that the plaintiff had been suffering from depression. Dr. Ottey has described the condition as a chronic adjustment disorder which seemed to have originated since his arrest in 1988, the later events leading up to his prosecution as well as the perception by the plaintiff of unfair treatment by the police. Mrs. Ferguson-McNair submitted that since the plaintiff had not seen even a general practitioner before going to Dr. Ottey little or no weight should be attached to his assessment.

It is undisputed that the plaintiff had waited for some ten(10) years before he sought medical evaluation but it is my considered view that I should give due consideration to the evidence of Dr. Ottey and Miss Evans, the neuro-psychologist. At the time of his

evaluation in 1998 by Dr. Ottey he was functioning at 65% of his full overall psychological function. Dr. Ottey was of the view that with treatment he would obviously improve. Having regards to the lapse of time it was likely he said that the plaintiff would continue to have some symptoms. This evidence has remained unchallenged at the end of the day. In light of this opinion, the plaintiff should have mitigated his loss and Mr. Samuels agreed that his failure to seek early professional help should be discounted from any award he is entitled to receive.

I have given due consideration to several awards over the years for this cause of action but it must be admitted that no two cases are ever alike. Uniformity and consistency of awards are also principles that I have to bear in mind.

I am of the opinion therefore, that an award of Four Hundred and Fifty Thousand Dollars (\$450,000.00) would be appropriate in the circumstances. I do not believe however, that the facts of this case fall into the category of cases for the imposition of exemplary damages. I will not make any award therefore, under this head of damages.

Special Damages

A number of items in the statement of claim have not been proved. They are: Legal fees, loss of earnings as a farmer, transportation and medical expenses. No evidence was given by the plaintiff nor any of his witnesses called, in respect of these items.

The claims with respect to loss of cattle, goats, pigs, domestic fowls and loss of cultivation have not been strictly proved so they will not be allowed. The plaintiff said in evidence that he had lost all of his cows and that this loss could be One hundred and odd thousand dollars (emphasis supplied). He also said:

“.....each goat I lost had different values. The goats value could reach approximately \$100,000.00. I use to sell young pigs for \$800. I value the 7 hogs for about \$6,000.00. I value the 14 young pigs at \$800 each. I had 210 domestic

fowls. I lost all of them. The value could be about \$5000. I value all the things in the cultivation over \$150,000.00.”(emphasis supplied)

When one compares the sums claimed however in the statement of claim they do not correspond in any way with the plaintiff's evidence. No application was made to amend the statement of claim and Mr. Samuels' silence on these claims during his address would suggest that he realized the deficiencies. I disallowed evidence being led as to the loss of the game fowls since Mr. Samuels accepted that they were reared for illegal purposes.

All that is left for me now to consider is the plaintiff's loss of earnings as a chauffeur. It is pleaded in the statement of claim that he is seeking to recover earnings from August 1988 to April 1991 (156 weeks) and continuing. No rate of pay was pleaded however. The plaintiff testified that up to the time of his arrest and prosecution, he was employed to Tourwise as a bus driver and was in receipt of \$990 weekly. After his case was concluded in the Magistrate's Court he remained at home for 9 – 12 months due to difficulties in obtaining a job. He then got a job and began to drive the bus "Sir Viv" and was earning \$4,300 weekly. I do believe he was under a duty to mitigate his losses and he ought to have sought alternative employment when he found himself in the position of not being able to continue driving for any long period of time. I would allow him six (6) months loss of earnings at a rate of \$3000 weekly in the circumstances. This makes it a total of \$72,000.

Conclusion

There shall be judgment for the plaintiff in respect of the malicious prosecution as follows:

General damages

An award of \$450,000.00 with interest thereon at the rate of 6% per annum from the 27th day of May 1990 up to today.

Special damages

In the sum of \$72,000 with interest thereon at the rate of 6% per annum from the 7th day of April 1988 up to today.

There shall be costs to the plaintiff to be taxed if not agreed.

Harrison J
Judge of the Supreme Court
November 10th, 2000.