

EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2010/0312

BETWEEN:

[1] SHANNOID BASS
Claimant

And

[1] SERGEANT VENESIA WILLIAMS
1ST Defendant

[2] THE ATTORNEY GENERAL OF ST KITTS AND NEVIS
2ND Defendant

Appearances:

Ms Sherry-Ann Liburd of Gonsalves, Hamel-Smith for the Claimant
Ms W. Alethea Gumbs of Attorney General Chambers of the 1st & 2nd Defendant

2012: July 30, 31
October 17

JUDGMENT

[1] **THOMAS, J. [Ag.]**: The Claimant, Shannoid Bass of Lower Monkey Hill, St Peters Parish filed a Claim Form on 5th November 2010 and claims against:

1. the 1st named Defendant who at all material times in the employment of the Government of the Federation of St Kitts and Nevis and;
2. the 2nd named Defendant in his statutory capacity as the Government officer in whose name proceedings against the Crown are instituted by virtue of the Crown Proceedings Act Cap 5.06 of the Revised Laws of St Kitts and Nevis,

jointly and severally for wrongful arrest and/or false imprisonment of the Claimant on or around 8th May 2010 at Ponds Pasture, Basseterre, St Kitts by the 1st named Defendant who maliciously

and/or without reasonable cause or probable cause arrested and/or imprisoned the Claimant in the course of her duty with the 2nd named Defendant.

[2] The prayer is for the following reliefs:

1. Damages for wrongful arrest and/or false imprisonment.
2. Aggravated damages;
3. Exemplary damages;
4. Costs
5. Such further or other relief as the Court considers just.

Statement of Claim

[3] In his Statement of Claim the Claimant sets out the events on or about 8th May 2010 at about 12:03am surrounding his vehicle, P640 and another vehicle, PA569, which resulted in an impasse.

[4] The Claimant avers that the 1st Defendant arrived at the scene and proceeded to give him certain orders according to him was "an unreasonable and/or unlawful request or direction in all the circumstances."

[5] Particulars are pleaded in this regard. The Claimants' further averment is that after certain exchanges with the 1st Defendant he was ordered to exit his vehicle and was informed that he was under arrest for failing to comply with orders given by a high ranking police officer.'

[6] It is the Claimants' contention that his arrest was wrongful, malicious and/or without reasonable cause.

[7] The particulars pleaded are as follows:

- (a) The purported offence for which the Claimant was arrested was not an arrestable offence;
- (b) The order and/or direction by the 1st named –Defendant was unlawful;
- (c) The Arrest of the Claimant was excessive in all the circumstances

(d) The Claimant was entitled to disregard the instructions of the 1st named Defendant in all the circumstances.

[8] The Claimant also contends that the 1st Defendant acted with malice and the following particulars are pleaded:

- (a) The demeanour of the 1st named Defendant
- (b) There was no reasonable cause or grounds for the arrest of the Claimant. The 1st named Defendant was upset with the Claimant because he did not comply with her unlawful request and/or direction;
- (c) The situation was resolved by asking the driver of PA569 to reverse his vehicle as the Claimant had suggested.

[9] At paragraph 10 to 13 of the said Statement of Claim the Claimant details the events after he was told of his arrest ending up at the Basseterre Police Station placed in a cell and released on 8th May 2010 after being detained for seven hours. The Claimant avers further that upon his release he was informed that all charges were dropped.

[10] At paragraphs 16 and 17 of his said Statement of Claim the Claimant avers that on 3rd June 2010 a letter was sent by his attorney-at-law, Anthony Gonsalves of Gonsalves Hamel-Smith indicating a certain course of action; and further that on 1st October 2010, after being informed that all charges were dropped he was served with three summonses charging him with offence in relation to the incident of 8th May 2010.

[11] In the circumstances the Claimants prayer is for damages for wrongful arrest, for false imprisonment, aggravated damages, exemplary damages costs and such other relief as the Court considers just.

Defence

[12] In their Defence the 1st and 2nd Defendants dispute the Claimants' Statement of Claim on a number of grounds including the following:

- "2. The Claimant was lawfully arrested for obstruction of the free flow of traffic and for failing to obey the lawful direction of a police

officer contrary to the Vehicles and Road Traffic Regulations. The Claimant was not falsely imprisonment."

- [13] It is the further averment of the 1st and 2nd Defendant is that the 1st Defendant's instructions to the Claimant were reasonable and necessary in all the circumstances.
- [14] The Defendants deny the Claimant's contention that his arrest effected wrongfully, maliciously and without reasonable cause. Instead, the Defendants aver that the Claimant was informed of the offences for which he was arrested and both of which are known to the Laws of Saint Christopher and Nevis. And further that the arrest was necessary to resolve the situation as the Claimant was intransigent in his response to a reasonable and lawful order of the 1st [Defendant] and Corporal Mitcham, and was willfully and unreasonably blocking the free flow of traffic.
- [15] It is admitted that the 1st Defendant did ask the Claimant to hand over his keys and accompany the officers to the Basseterre Police Station.
- [16] In response to paragraph 12 of the Statement of Claim, concerning the allegation of the search of the Claimant, the Defendant admit this but contend that such searches are standard procedure to ensure safety.
- [17] The Defendants deny that the Claimant was informed that all charges against him would be dropped and also contend as follows:
- "(a) The Claimant was processed and allowed a telephone call as soon as practicably possible given the number of prisoners being processed at the same time on May 8, 2010.
- (b) the Claimant was informed that he was being discharged but that summonses would be issued against him in respect of the offences."
- [18] At paragraphs 14 the Defendants deny that the Claimant was wrongfully imprisoned and deprived of his liberty and at paragraph 17 the averment is that the summons were not issued in response to the Claimant's letter to the 2nd Defendant.

Reply to Defence

- [19] In his reply to the Defence the Claimant contends that his arrest was unlawful with respect to the commission of an alleged offence under section 28 of the Vehicles and Road Traffic Act, Cap 15.66. It is further contended that the Claimant's arrest and subsequent detention was "unnecessary, excessive and unjustified."
- [20] With respect to paragraph 5(b) of the Defence this is denied and in this regard the following is stated: "... motor vehicle PA569 (PA569) was facing west and was positioned directly in front of the Claimant's vehicle P8640 (P8640) which was positioned on the mountainside/left side of the road facing east. There was a line of cars parked on the seaside of Pond Road. The position of PA 569 directly impeded the free flow of traffic traveling from west to east and could have caused an accident if the Claimant had not stopped P8640 to avoid a frontal collision with PA569."
- [21] In relation to paragraph 6(b) of the Defence (which relates to the position of the vehicles) the Claimant avers that: "The Claimant denies that motor vehicle PA569 was parked alongside vehicles which on the left-side facing west. The Claimant states that the driver of motor vehicle PA569 was parked on his right side in the mountainside of the road facing west."
- [22] The Claimant further casts doubt as to his conduct at the material time and avers¹ that he was not arguing angrily and loudly with Corporal Calvin Mitcham of the St Kitts and Nevis Defence Force. Even further the Claimant denies² that the 1st Defendant identified herself as a police officer to the Claimant and then enquired into the situation as alleged. Nor was the 1st Defendant calm at all times.³ And the 1st Defendant's instructions were not reasonable.

Evidence

- [23] The Court has analysed the totality of the evidence and makes the following findings of fact and without prejudice to further findings of fact:
1. Ponds Road is a two lane road given the 1st Defendant's evidence and her experience as a police officer and the fact that some six to eight vehicles were parked on the sea-side of

¹ At para 5 (b) iv of his Reply to Defence

² At para 5(b) (v) of his Reply to Defence

³ At para 5 ©

the said road and position of a Honda vehicle close to the Claimants' vehicle which gave rise to the issue before the court

2. By Implication the Court rejects the 1st Defendant's evidence that Pond Road can accommodate three vehicles with the measurement of 22 feet wide as no evidence was given as to any measurements taken.
3. The Claimant was heading east and was on the mountain side of the road and on his correct and lawful side of the road.
4. The Claimant had the right of way at the material time. This was accepted by the first Defendant.
5. The Claimants' car was parked close to raised side walk and a partly blocked side street.
6. There were vehicles behind the Claimant's vehicle. In this finding the Court rejects the evidence of the Defendants' witness to the contrary. In particular the evidence of Corporal Mitcham that during his 20 – 25 minutes stay at the scene of the incident he did not see any vehicle behind that of the Claimant.
7. On the 1st Defendant's arrival on the scene she only spoke to the Claimant and gave him orders to move and only spoke to Sutton at a later stage.
8. Contrary to what is pleaded by the Defendants given the width of the road to accommodate two vehicles and the parked vehicles on the sea side of the road, it is reasonable to infer that Sutton's vehicle was blocking the Claimant's vehicle.
9. At the time of his release the Claimant was told that the charges against him would be dropped.
10. The police officers who came on the scene were armed especially having regard to the time of night.
11. The 1st Defendant admitted that the Claimant gave his name and address.
12. The 1st Defendant admitted in cross examination that some of her orders to the Claimant were carried out.
13. The 1st Defendant admitted that the Claimant was not arguing with her but that he was not always polite.
14. The 1st Defendant admitted that the offences for which the Claimant was charged are minor offences.

15. Contrary to the demands by the 1st Defendant the court finds as a fact that the 1st Defendant did say the bench was too good for the Claimant and he should be put in the cell.
- [24] It is the further determination of the Court that the persons who gave evidence on behalf of the Claimant are more credible than witnesses for the Defendants.
- [25] In particular, the Court rejects the testimony of Calvin Mitcham: that he never spoke to Sutton when it is clear from the evidence that he did, that the Claimant's vehicle was in the middle of Pond Road which he later changed and his testimony that over a period of twenty to twenty five minutes at the scene, no vehicles came behind the Claimants vehicle on a Friday night.
- [26] The Court also notes the change in the testimony of Shane Sutton with respect to what he did in relation to the vehicles parked on the sea-side of Pond Road. In short, his testimony in complication in this connection differed fundamentally from what he said in his witness statement.
- [27] Finally, the 1st Defendant admitted that her earlier testimony that the Claimant did not obey all of her orders is not true.

ISSUES

- [28] The issues for determination are:
1. Whether there was a wrongful arrest and/or false imprisonment of the Claimant by the 1st Defendant on or about 7th May 2011; and if so whether the 1st Defendant was acting in the course of her duties as a police officer.
 2. Whether the Claimant is entitled to damages for wrongful arrest and/or false imprisonment, damages and costs.

ISSUE NO. 1

Whether there was a wrongful arrest and/or false imprisonment of the Claimant by the 1st Defendant on or about 7th May 2010, and if so whether the 1st Defendant was acting in the course of her duties as a police officer.

[29] It is not in dispute that on or about 7th May 2010 the Claimant, Shannoid Bass, was arrested by the 1st Defendant and two officers under the Road Traffic and Motor Vehicles Act Cap. 15.06 ("The Act") and detained for some 7 hours and 45 minutes at the Basseterre Police Station. The Claimant contends that the action of the 1st Defendant constituted unlawful arrest or false imprisonment, but the Defendants say that the arrest was lawful.

[30] In the learning⁴ relating to false imprisonment it is defined as the infliction of bodily restraint which is not expressly or impliedly authorized by law. Further, that is not committed unless motion be restrained in every direction. It is also said that it means merely imprisonment that is merely wrongful or unlawful.

Submissions

[31] The submission on behalf of the Claimant are along the following lines: Firstly, the two offences for which the Claimant was arrested (obstructing the free flow of traffic and failure to comply with the order of a police officer) are not arrestable offences under the Act since the prerequisites for the arrest were not satisfied. Secondly, there was no basis for the Claimant's arrest having regard the nature of the request made of him by the 1st Defendant and the space available; the 1st Defendant's evidence that the Claimant was obstructing traffic when it was established in evidence that the Claimant had the right of way; the issue as to whether the Claimant could have reversed to permit the free flow of traffic when the evidence established that there were other vehicles behind the Claimant's vehicle; and the manner in which the issue involving the two drivers was resolved when the driver of the other vehicle was asked to reverse. Thirdly, the period of the Claimant's detention was

⁴ Winfield and Johowicz on Tort – (16th ed.) at paras 4.12 – 4.15; Gilbert Hodinye, Tort- Text Cases and materials pp.22 et seq

unreasonable plus there was no lawful reason for the detention given the nature of the offences.

[32] The submissions on the arrest end in this way:

"Therefore, one submission is that there was no basis for the arrest of the Claimant in the foregoing circumstances. The offence was not an arrestable offence as admitted by the 1st Defendant and the Claimant complied with the First Defendant in giving her the information as to his name and address as requested by the First Defendant. The arrest of the Claimant was excessive in all the circumstances. The First Defendant admitted that the Claimant was the first person she arrested for the said offences in 28 and a half years she was in the force. The arrest of the Claimant was unlawful in all the circumstances."

[33] On behalf of the Defendants the following are the salient aspects of the submissions:

"[I]t is contended that the Claimant obstructed the free flow of traffic, with absolutely no regard for other users of the road, whether or not such road users would have been emergency vehicles or not. In fact, the obstruction of the free flow of traffic by the Claimant also obstructed the 1st Defendant from continuing her journey, as the 1st Defendant in her evidence in her witness statement on page 8, paragraphs 2 and 3 at Bundle 2 ... had to park her vehicle within which she was traveling east to west along Pond Road, after realizing that the traffic was not flowing westward or eastward.

By virtue of statutory enactment, the Police Act No. 6 of 2003 section 6 (i) (a) states that (A police officer may without a warrant arrest a person he reasonable suspects of having committed an offence". Notably, in this case, the 1st Defendant informed the Claimant that he was obstructing the flow of traffic. It is thus submitted that 1st Defendant based on the situation on Pond Road on or about 11:55pm reasonably suspected that the Claimant of having committed the offence of obstructing traffic. I submit that the Act speaks to an offence and make no distinction between a felony or misdemeanor offence.

Additionally, the aforesaid Police act speaks to the statutory duty of a Police Officer under section 5 (2) (a) to preserve the peace, prevent and detect crimes and other infractions of the law.' The 1st Defendant by his repeated orders to the Claimant to continue his journey due to more than enough room to continue his journey or to reverse as there was no traffic behind him; it is contended sought to prevent the crime or offence of obstruction of the free flow of traffic from occurring.

In *Christie v Leachinsky* [1946] KB 145 it was held that in normal circumstances an arrest without warrant either by a policeman or by a private person can be justified only if it is an arrest on a charge made known to the person arrested. It is a condition of lawful arrest that the party arrested should know on what charge or suspicion of what crime he is arrested ..."

Reasoning

Arrest

[34] Contrary to the submissions on behalf of the Defendants the Vehicles and Road Traffic Act is the enactment under which the 1st Defendant purported to act in arresting the Claimant. This point is made because learned counsel for the Defendants tendered extensive submissions in relation to the power of arrest under the Police Act which was not pleaded. As such at the stage of submissions new arguments cannot be introduced that are not contemplated by the pleadings.

[35] This is the essence of the pleadings in the defence:

"2. The Claimant was lawfully arrested for obstruction of the free flow of traffic and for failing to obey the lawful direction of a police officer contrary to the Vehicles and Road Traffic Regulations. The Claimant was not falsely imprisoned."

[36] The power of arrest contained in Section 78 (2) of the Act is enacted in these terms:

"A police officer may apprehend without warrant any person who commits an offence under the regulations within his view, if such a person refuses to give his name and address or gives a name and address which a member of the Police Force has reasonable grounds for believing is false."

[37] Therefore, in terms of the arrest the power under section 78 (2) is only exercisable in the circumstances where the person to be arrested gives a false address or there is a suspicion by a police officer that the name and address are false. In this connection the uncontradicted evidence is that after the Claimant was ordered to drive his vehicle to the Basseterre Police Station accompanied by two armed police officers he was asked his name and address and he complied. There is no evidence that the information given was false. This was confirmed by the 1st Defendant under cross examination that the Claimant did give his name and address. Even after this was done the Claimant was placed in a cell.

[38] Reliance on the case of **Christie v Leachinsky** that the person to be arrested must be told of the offence cannot assist the Defendant as there was no legal authority contained in section 78(2) of the Act to arrest the Claimant.

[39] The manner of the exercise of a power of arrest without warrant Wooding CJ in **Irish v Barry**⁵ had this to say:

“The right or power to arrest without a warrant ought never to be lightly used. Those who possess it ought, before exercising it, to be observant, receptive and open-minded, not hasty in jumping conclusions on inadequate grounds. Caution should be observed before depriving any person of his liberty, and more especially so when no prejudice will result from any consequent delay. I am not in the least concerned, because I think it wholly irrelevant, that further enquiry may have elicited no additional information thrown no greater light on the investigation on hand. What is important is that in such a case as this, no person should exercise the power of arrest unless he had proper and sufficient grounds of suspicion. If he does, then he is acting hastily and/or ill-advisedly. In all cases, therefore the facts, known personally and/or obtained on information ought to be carefully examined.”

[40] As noted before, the only basis upon which a police officer could arrest is where the person to be arrested refuses to give his name and address or there is reasonable suspicion that the information given is false.

[41] The Court therefore agrees with the submissions on behalf of the Claimant that the exercise of power by the 1st Defendant was unlawful.

The Offences

[42] The two offences for which the Claimant was supposed to be charged are: obstructing the free flow of traffic and failure to comply with an order of a police officer. However the charge sheet shows a single charge under Regulation 20(5) of the Vehicle and Road Traffic Regulations.

[43] To the extent of its materiality Regulation 20 (5) provides that:

“(5) Every driver of a vehicle ..., in relation to traffic directions shall conform to the rules of the road in regard to all kinds of traffic and shall comply with the lawful directions of any member of the Police Force charged with the regulation of traffic ...”

[44] The circumstances of Claimant being charged are as follows:

⁵ [1965] 8 WIR 177, 182

- (a) The Claimant was traveling east in his vehicle on the mountain side of Pond Road. At some point another vehicle passed a number of vehicles parked on the sea-side of the said Pond Road and stopped in front of the Claimant's vehicle.
- (b) the 1st Defendant arrived on the scene and proceeded to give directions to the Claimant to move his vehicle through a side street which was also partially blocked by the other vehicle.
- © The Claimant refused to comply and gave reasons, including damage to his vehicle in light of the space available.

[45] The sanction for such refusal is to be dealt with by a charge in the Magistrate's Court in view of the fact that Regulation 20 (5) is in mandatory terms. However, there is no power of arrest for such failure. It is a matter of guilt or innocence at the trial of the matter.

[46] Therefore, the particulars of reasonableness pleaded by the Defendants are not relevant to a mandatory provision with respect to directions by a police officer.

Course of duty

[47] There can be no doubt that the 1st Defendant was acting in the course of her duties as a police officer as and as such makes the 2nd Defendant and by extension the Crown liable for her actions.

Conclusions

[48] It is therefore the determination of the Court that the arrest of the Claimant by the 1st Defendant was unlawful and constituted false imprisonment and as such the Crown is vicariously liable for the unlawful actions of the 1st Defendant on the 7th May, 2010.

ISSUE NO 2

Whether the Claimant is entitled to damages for wrongful arrest/or false imprisonment, aggravated damages and costs.

[49] The Court has determined that the Claimant was falsely imprisoned and the related rule is that the tort is actionable per se without proof of damage.

[50] The learning⁶ is also that there are no set rules for the determination of damages and as such the quantum is purely within the discretion of the trial judge. The learning further indicates that the main heads of damages are: loss of liberty, injury to feelings (ie the indignity, disgrace, humiliation and mental suffering arising from the detention); physical injury, illness or discomfort resulting from the detention, injury to reputation and any pecuniary loss that is not too remote a consequence of the imprisonment (eg loss of business, employment or property).⁷

Submissions

[51] The following is extracted from the submissions on behalf of the Claimant:

"24. In order for the Court to make a determination as to what sum would be an appropriate amount to compensate the Claimant, Shannoid Bass for the humiliation and indignity suffered as a result of his unlawful arrest and detention, guidance can be had from similar cases decided by the Eastern Caribbean Supreme Court. The object of an award of damages is to compensate the Claimant for the loss and damages suffered. According to *Omarra Small v Michael Laudat and the Attorney General of Dominica*, NO 12 of 2010 (TAB 1), a case that involved an assessment of damages for false imprisonment and malicious prosecution, the Court stated that the Claimant is to be compensated for the disadvantage suffered by him as a result of the act or default of the Defendants. In *Omarra Small*, the Court cited the unreported decision of *Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica CLAIM NO. DOMHCV2006/0038*, in a judgment delivered in 2008, where the High Court awarded the first claimant \$20,000.00 for false imprisonment for **six hours** (emphasis my own) and \$25,000.00 to the second Defendant for false imprisonment for **nine hours** (emphasis mine) and the sum of \$10,000 to each Defendant for aggravated and exemplary damages. In *Myster Peter Matthew v the Attorney General of Dominica Claim No 472 of 2000*, a judgment delivered in 2006, Justice Lewis S. Hunte awarded the Claimant the sum of \$20,000.00 for damages for false imprisonment.

25. Additional guidance can be gleaned from the Court of Appeal decision delivered in 1999, *Elihu Rhymer v The Commissioner of Police et al BVI Civil Appeal No 13 of 1997 (TAB) 2*, the Court of Appeal, awarded the Claimant/appellant \$20,000.00 for **three hours** (emphasis mine) unlawful detention in a situation where none of the charges against the appellant were pursued before the Magistrate. They were either struck out or dismissed for want of prosecution."

[52] The submissions on behalf of the Defendants are in these terms:

⁶ See Gilbert Kodilinye, op.cit at p.55

⁷ Mc Gregor on Damages (15th ed) at para. 1619

"24. It is submitted that there was no wrongful arrest or false imprisonment of the Claimant by the 1st Defendant and as such no award of general damages should be made. The Claimant should not be compensated for his wrong in obstructing the free flow of traffic. The defence of *ex turpi causa non oritur* is relied on to prohibit the Claimant from being enriched from his wrong and no action should be founded on an illegal act. It is contended that the law ought not compensate people who have suffered loss in the course of their own wrongful actions, even where the primary cause is been attributable to someone else. Additionally, the evidence of the Claimant and his three other witnesses at odds and is not credible and should be disregarded.

28. The detention of the Claimant at the Police Station was reasonable in the circumstances and no award of damages should be payable to the Claimant. The Case of Albert Augustin and WPC Bertie Ferdinand and The Honourable Attorney General of St. Lucia SLUHCV 2008/0647 is provided for Your Lordship's contemplation where no malicious prosecution was evidence in this case and the claims of unlawful arrest and false imprisonment were struck out. In this instant case the issue of malice was raised but the particulars to prove malicious prosecution were not made out. Mere mention of malice on its own is insufficient to give rise to malicious prosecution as the four essential ingredients must be established and this was not made out in this case."

[53] In the view of the Court counsel for the Defendants have not properly addressed the issue of damages. For instance it must be contrary to the established relevant principles of law to say that the Claimant's detention for some seven hours was justified. It is in fact the 1st Defendant's testimony that the Claimant did not resist arrest and gave his name and address and generally cooperated with the police.

[54] In his witness statement the Claimant gives this evidence after detailing the driving of his vehicle accompanied by two police officers, to the Basseterre Police Station:

"When I was at the Police Station I was asked by a male officer on duty for my name and address. I gave my name and address to the said officer as requested. I was then placed against a wall searched and placed in a cell. The cell was unlit and emitted a foul smell. I was denied a phone call during this period of detention. A few hours after my arrest, I was searched a second time – during this search I was forced to take off my undergarments. This was very embarrassing. I felt like a common criminal. I was imprisoned in the cell for over 7 hours until I was released at about 7.55am on Saturday 8th May 2010. At the time of my release I was informed by the officer on duty at the time all charges against me were dropped.

The whole incident has been very humiliating and embarrassing to me. The following week at school a female student of form five confronted me and knew of my arrest. Even some members of the Basseterre High School Football team; of

which I am in charge, knew of my arrest. This incident has caused me much distress as I have had to answer questions in relation to this arrest.”

[55] Under cross examination the 1st Defendant hardly contradicted the Claimant's evidence with respect to the events after his arrest. For example, it was admitted that the Claimant did not refuse to give his name and address, did not resist his arrest, he did not object to being escorted by two police officers in his vehicle.

Quantum (false imprisonment)

[56] Apart from the heads to be considered in arriving at the quantum of damages, the Court also notes that the Claimant is a teacher at a Secondary School Basseterre and in charge of the school's football team. He was arrested and detained for more than seven hours.

[57] The authorities cited⁸ show the awards are in the region of up to \$20,000.00 for detention for between 3 to 6 hours and \$25,000.00 for 9 hours detention. These cases date back to between 1997 to 2008.

[58] In **Elihu Rhymeh and Commissioner of Police, Arthur James Jeremiah Clarke**, Mr Justice Satrohan Singh in delivering the judgment of our Court of appeal in making an award of damages for wrongful arrest and false imprisonment on 25th January 1999 gave this reasoning in part:

“It is accepted that the appellant is a respected individual in this jurisdiction and that he occupied lofty positions both in the public and private sectors in the BVI community. It cannot be disputed that he was severely humiliated, ridiculed and treated with contempt not only because of the fact of his arrest and detention but also because of the method of his arrest where according to one witness the police dumped him like a can of sardines in the back of the van; just chucked him in like a can of sardines’ and another witness who said they scuffed him and pitched him in the car like a bag of flower’. There was also wide publicity of his arrest and the charges laid against him.”

⁸ Omarra Small v Michael Laudat and the AG of Dominica No 12/2010; Raymond Warrington & Karl Peters v Cleville Mills & AG of Dominica claim no DOMHCV2006/0038, Myster Peter Matthews v AG of Dominica Claim No 472/2000; Elister Rhymer v Commissioner of Police et al Claim BVI Civil Appeal No 13/1997; Kishola Antonia Levine; Aminor v Kenney Smart v Ali of Grenada Claim No GOAHCV 2007/296

[59] The damages awarded for three hours of false imprisonment was \$20,000. This was about twelve years ago.

[60] The Court accepts that given the Claimant's status as a teacher he would have been humiliated disgraced and his reputation injured. Therefore, having regard to all the circumstances the Court awards \$30,000.00 in damages for false imprisonment.

Quantum (aggravated damages)⁹

[61] In **Winfield & Jolowincz on Tort**¹⁰ the law relating to aggravated and exemplary damages is stated in part as follows:

"In torts like libel an assault for damages are often said to be 'at large'. What is meant by this is that damages cannot be precisely quantified in money terms. But the Claimant is entitled to substantial award for the wrong against him. The issue is even if the trial is by judge alone, a 'jury question'. Part of the award in these cases will reflect the injury to the claimant's feelings and the mental distress he has suffered as well as the need to vindicate his rights. The injury to feelings and distress may however, be increased by the bad motives or willful behaviour of the defendant and it is then possible to make a corresponding increase in the award as an 'aggravation' of damages. Such aggravated damages, unlike exemplary damages, are compensatory in nature."

[62] Also in **McGregor On Damages**¹¹ the following learning is recorded with respect to the award of damages in this context:

"In certain torts, particularly those of defamation, false imprisonment and malicious prosecution the measure of damages may be affected by the conduct, character and circumstances of both plaintiffs and defendant. These factors are said to go in aggravation or in mitigation of the damage. Thus the damage is most commonly aggravated and the damages correspondingly increased by the defendant's bad motives or willfulness ... the damage may also be aggravated by reason of the good character and reputation of the plaintiff."

[61] The submissions on behalf of the Claimant in summary are that aggravated damages should be awarded because of:: the 1st Defendants' conduct demonstrated malice, spite

⁹ In written submissions on behalf of the Claimant it is indicated that the Claim for exemplary damages is no longer being pursued.

¹⁰ At paragraph 22.8

¹¹ At paragraph 280

and ill-will towards the Claimant having regard to the fact that he instructed another officer that the Claimant should not be placed on the bench but in a cell; the arrest was in front of a large crowd as revealed in the evidence; the Claimant was escorted to the Basseterre Police Station by armed police officers, the offences for which the Claimant was arrested were non-arrestable offences; the Claimant had a good reputation as a teacher of the Basseterre High School and coach of the school's football team; and the manner of the search carried out on the Claimant including the removal of his undergarments.

[62] Having regard to the relevant findings of fact and critically the 1st Defendant's admission that the Claimant did not resist arrest, the Court determines that the placing of the Claimant in the cell as being central to the aggravation. And on the whole there is nothing in the evidence to contradict the Claimant's contention with regard to aggravated damages.

[63] On the evidence, the submissions and the authorities the Court awards the sum of \$10,000.00 for aggravated damages.

Costs

[64] The Claimant is entitled to prescribed costs on the awards calculated in accordance with Part 65.5 of CPR 2000.

ORDER

IT IS HEREBY ORDERED as follows:

1. The arrest of the Claimant by the 1st Defendant was unlawful and constituted false imprisonment and as such the Crown is vicariously liable for the actions of the 1st Defendant.
2. The Court awards damages in the amount of \$30,000.00 for false imprisonment and \$10,000.00 as aggravated damages.

3. The Claimant is entitled to prescribed costs calculated in accordance with Part 65.5 of CPR 2000.

Errol L Thomas
High Court Judge [Ag]