

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

(Civil Division)

Claim No. 924 of 2015

BETWEEN:

TYRONE ROOSEVELT AGARD

CLAIMANT

AND

PHILIP GREENIDGE

FIRST DEFENDANT

NICHOLAS THORNE

SECOND DEFENDANT

LEMAR DANIEL

THIRD DEFENDANT

THE COMMISSIONER OF POLICE

FOURTH DEFENDANT

ATTORNEY GENERAL

FIFTH DEFENDANT

Before the Honourable Mr. Justice Cecil N. McCarthy, Judge of the High Court

Date of Decision: 2019 December 18

Mr. Hilary J. Nelson and Mr. Steve I. Straughn for the Claimants

Mr. Jared K. Richards and Ms. Deidre McKenna for the Defendants

DECISION

INTRODUCTION

- [1] This matter arises out of an all too familiar use of excessive force by the police against a private citizen, while attempting to execute a search warrant.
- [2] The proceedings before the court were commenced on 2 July 2015 by fixed date claim form with accompanying statement of claim by which the claimant claims damages for assault, false imprisonment, malicious prosecution and defamation.
- [3] It matters not that the claim ought to have been commenced by Form 1 rather than Form 2 since the defendants have not responded to the claim and have indicated to the court that liability is accepted.
- [4] The only matter before the Court is the assessment of damages. To this end, both parties have made written submissions with respect to quantum.

FACTUAL BACKGROUND

- [5] On 13 May 2013 the first, second and third defendants attended the claimant's residence to execute a search warrant in the name of "Jamal Agard", the son of the claimant. It appears that "Jamal Agard" was not home at the time the warrant was executed and this fact was communicated to the police.

- [6] According to the claimant, he went into the road to try to make a call to his son when he was confronted in a hostile manner by the first defendant. In the exchange of words he told the first defendant not to come back onto his property and the first defendant defied his instructions. The verbal confrontation escalated to a physical altercation in which the first three defendants allegedly assaulted and beat the claimant.
- [7] Following the altercation, the claimant was arrested, taken into police custody for a period of approximately nineteen (19) hours and charged with the following offences:
- (1) Assault of Philip Greenidge, Police Constable #1513 [the first defendant] during the execution of his duties;
 - (2) Obstruction of Philip Greenidge, Police Constable #1513 during the execution of his duties;
 - (3) Resistance of Nicholas Thorne, Police Constable #1948 [the third defendant] during the execution of his duties; and
 - (4) Resistance of Lemar Daniel, Police Constable #1949 [the second defendant] during the execution of his duties.
- [8] At the police station the claimant was strip-searched and told to “stoop down and cough”.

- [9] The claimant, complained to the police that as a result of the altercation he had sustained injuries and was experiencing pain. Officers of the Royal Barbados Police Force took him to visit the medical doctor, Dr. Andrew Murray, who examined him.
- [10] After having the charges read to him at the Holetown Magistrate's Court and being released on bail, the claimant visited his private medical doctor, Dr. Ann Auguste, who examined him. Both medical practitioners subsequently provided medical reports on his condition.
- [11] The said charges were heard by Magistrate Barbara Cooke-Alleyne, and on or about the 2nd day of October 2014 the magistrate dismissed all charges against the claimant.
- [12] On 2 July 2015 the claimant commenced legal proceedings for damages sustained as a result of personal injury allegedly inflicted by the first, second and third defendants (three constables of the Royal Barbados Police Force). The defendants having filed no defence in this matter, eventually conceded that they were liable and have agreed to accept the facts as stated in the claimant's claim and the witness statement filed by the claimant.
- [13] According to the claimant's witness statement, a policeman knocked at his door between 5:15 and 5:30 p.m and said that he had a warrant for his son,

Jamal Agard. The claimant informed him that his son was not at home and the officer then asked him if he could get hold of him.

[14] The events immediately after this initial exchange with the police officer, who was accompanied by others, are related at paragraphs 5 to 17 of the claimant's witness statement and are captured in the paragraphs immediately following:

5. *I tried to call my son on my cell phone, but the call did not go through.*
6. *The officer who spoke to me was Sargeant Jerry Carter, who was standing on the top of a flight of steps onto which my side door opened.*
7. *I went outside to try to pick up a signal with the cell phone, I went into the road in front of my home and one of the guys, presumably a police officer who was wearing a "MOHAWK" style haircut and who I later learnt was called PHILLIP GREENIDGE came into the road with me with an attitude, I heard him say – "I don't know why they don't take up the man and let me leave bout here. This is bare foolishness." Whereupon I said to the officer – "You like you have an attitude or a problem, I don't want you on my property, let the other man deal with this matter".*
8. *I told the officer not to go back on my property. At this point, I had not been shown any warrant.*
9. *The officer flung off his hands and said that you cannot stop me from going on the property. At this time, the officer was about seven (7) feet away from me and he*

went back onto my driveway to my property. I left the road and went up to him and told him to go off my property.

10. *The officer then pushed me violently and started to cuff me on the left and right side of my face. He also gave me two stinging “belly searchers” to my stomach and told me that I couldn’t “fuck with him”. I tried to hold onto him to prevent the blows and from falling and another three (3) officers approached me and started to beat me by cuffing me in the back of my head, neck and shoulders.*
11. *One officer struck me at the back of my head and I felt dizzy and as I was falling over, they were punching me violently.*
12. *They lifted me up from the ground and opened the van door pushed me into the van and put handcuffs on me. All the while I was not resisting. I did not retaliate or resist in any way. I was held by my two feet and lifted off the ground.*
13. *The police officer, who first struck me said, “I am going to search the house, whether you like it or not”. Then, as I was being punched with short hard jabs, I hear my mother-in-law shouting, “Wait, wanna gine kill him”, then the same officer and some others, entered my house through the side door, without my permission, and one of them told my mother-in-law to send a shirt for me and they returned to the vehicle with the shirt.*
14. *The police officers brought me to District “A” Police Station, Station Hill Division and put me in a room to sit for about five (5) minutes. Next, thereafter, they called me into a room, made me take off my pants, searched them, made me take off my boxers, and searched them.*

15. *They told me to stoop down and cough and then told me to put back on my clothes.*
16. *The Police brought my son in, while I was at the Station in front of me and asked him, what is that he told me about his workplace.*
17. *While I was at the Station. All of my back and face was hurting from the blows, which I received at the hands of the officers.”*

[15] The claimant was seen by two medical practitioners soon after sustaining his injuries. On 14 May 2014 he was seen by Dr. Andrew Murray, whose findings are set out in the next paragraph.

[16] *“The examination findings were as follows.*

The Head: There was mild tenderness of the right infra-orbital area. No abnormality was noted for the right eye. There was also mild tenderness inferior to the left pinna.

The Back: There was generalized subjective tenderness of the upper and lower aspects. No abrasions were noted.

The Chest: There was mild tenderness at the left pectoral aspect and at the most inferior aspect of the sternum.

Mr. Agard was diagnosed as having multiple Soft Tissue Injuries. An oral non-steroidal anti-inflammatory was prescribed and an entry was made at that time in the public medical journal and returned to the police officer. I have not reviewed Mr. Agard for his injuries since the consultation.

The injuries sustained by this patient are consistent with injury arising from trauma occurring within twenty-four hours preceding the initial consultation. The injuries were

likely sustained when blunt solid objects made forceful impact with the injured body areas. The force used was likely mild to moderate in intensity.

The sustained injuries would have caused mild to moderate physical pain from the moment that they were acquired and there may also been mild swelling and hyperaemia at that time. This pain would have been expected to persist but diminish while the injuries were healing, and any swelling or redness of the tissues may have receded by the time the examination was conducted hours later. The injuries were not likely to affect his general state of health nor to affect his general normal function and they were likely to heal within ten days. During this time of healing the chest and back injuries would have caused discomfort with ambulation and other movements of the trunk and may have adversely affected his ability to acquire a sound sleep.

These injuries allegedly occurred while he was in police custody. This therefore would have been an unusual and unexpected occurrence for this patient and surely would have caused him emotional distress. The prognosis for Mr. Agard's physical injuries remains good and no long-term complications are anticipated."

[17] On 15 May 2014 the claimant consulted Dr. Ann Auguste. Her findings were similar to those of Dr. Murray. She wrote:

"On examination, the patient looked flustered and very upset. His gait was normal. There was discomfort over the base of his neck extending to the right side of neck and along to his lumbar spine. There was tenderness over his right cheek and left angle of the mandible towards the neck. There was a linear abrasion along the left anterior mandible (under chin) with tenderness. Neck movements were normal.

[18] By any definition the claimant's injuries can only be accurately characterized as minor.

The Claimant's Submissions

[19] Despite the fact that Dr. Murray expressed the view that the claimant's injuries would heal within ten days, counsel for the defendant, under the rubric of "**Multiple assaults Occasioning Bodily Harm**", found it possible to claim the grand sum of \$292,005.00.

[20] Under the head of: "**Wrongful Arrest and False Imprisonment**", counsel claimed \$17,000.00.

[21] For "**Emotional distress**", counsel claimed the sum of \$60,112.00.

[22] Under the head of "**Inability to acquire a sound sleep**" counsel claimed the sum of \$24,452.00.

[23] For "**Defamation**" counsel claimed \$30,000.00.

[24] Under the head of "**Aggravated/ Exemplary Damages**" counsel claimed the sum of \$3,220.00.

[25] The thinking of counsel for the claimant is reflected at paragraphs 31 to 33 of his written submissions, which state:

"31. In cases such as the instant case, where there are multiple injuries, the Court is obligated to make an adjustment in the award to reflect the pain and suffering which the Claimant would have suffered from the combination of these multiple

injuries. Pitchford LJ outlines the matter thus in Sadler v Filipak (2011] EWCA Civ 1728:

“It is in my judgement always necessary to stand back from the compilation of individual figures, whether assistance has been derived from comparable cases or from the [Judicial College] guideline advice, to consider whether the award for pain, suffering and loss of amenity should be greater than the sum of the parts in order properly to reflect the combined effect of all the injuries upon the injured person’s recovering quality of life or, on the contrary, should be smaller than the sum of the parts in order to remove the element of double counting. In some cases, no doubt a minority, no adjustment will be necessary because the total will properly reflect the overall pain, suffering and loss of amenity endured. In others, and probably the majority, an adjustment and occasionally a significant adjustment may be necessary.”

32. *The instant case falls into the category of the majority where a significant adjustment is necessary because of the combined effect of the multiple injuries suffered by the Claimant as a result of:*

- (a) The multiple assaults occasioning bodily harm;*
- (b) False arrest;*
- (c) False imprisonment;*
- (d) Malicious prosecution*

which the Claimant suffered at the hands of the Defendants in this matter.

33. *Based on the quantum awarded by the Courts in cases with a similar fact pattern as that to the instant case, the Claimant is entitled to an award of*

BDS\$450,000.00 for general damages for the pain and suffering, assault, battery, wrongful arrest and false imprisonment imposed on him by the Defendants; and exemplary damages for the egregious nature of the assault and the humiliation caused to the Claimant thereby. This sum does not include an amount to be paid for special damages and costs.”

The Defendants’ Submissions

- [26] On 5 December 2018 Mr. Jared Richards and Ms. Deidre McKenna filed written submissions on behalf of the defendants.
- [27] Counsel for the defendants accepted the sum of \$8,558.75 claimed for special damages.
- [28] In respect of the assault, counsel considered the sum of \$6,000.00 to be appropriate.
- [29] For wrongful arrest and false imprisonment, the sum of \$12,000.00 was offered.
- [30] For malicious prosecution, the sum of \$2,000.00 was proposed.
- [31] For aggravated or exemplary damages the sum of \$3,200.00 was accepted.
- [32] Counsel, therefore, offered the sum of \$32,778.75 in full settlement of damages.
- [33] Counsel for the defendants rejected the claims for Emotional distress, inability to acquire a sound sleep, and for defamation.

[34] In respect of inability to acquire a sound sleep, counsel for the defendants submitted that this is not a separate head of general damage to be calculated in a global award for general damages as part of the award for pain and suffering and loss of amenities.

[35] In respect of the claim of damages for “emotional distress”, counsel for the defendants submitted that emotional distress is not a recognisable psychiatric illness and cannot by itself attract compensation.

[36] In respect of the claim for defamation, counsel submitted that defamation is not a recognisable head of damage in the instant matter and the appropriate claim is for malicious prosecution. It was contended that such a claim would amount to double counting and double compensation.

[37] In summary, counsel for the defendants requested the court to make an order in the following terms:

1.	General damages and assault	\$6,000.00
2.	Wrongful arrest and false imprisonment	\$12,000.00
3.	Malicious prosecution	\$2,000.00
4.	Aggravated or Exemplary damages	\$3,220.00
5.	Special damages	<u>\$8,558.75</u>
	TOTAL	<u>\$32,778.75</u>

- [38] Before I discuss the disputed heads of damages, I acknowledge that the parties have agreed to special damages in the sum of \$8,558.75 and \$3,220.00 for aggravated or exemplary damages.
- [39] Counsel for the claimant only claimed \$3,220.00 for aggravated/exemplary damages and this figure was accepted by counsel for the defendants.
- [40] Although I do not intend to depart from the sum agreed between the parties I do think it necessary to explain the difference between aggravated damages and exemplary damages.
- [41] **In Thompson v Commissioner of Police of the Metropolis; HSU v Commissioner of Police of the Metropolis, Lord Woolf MR**, delivering the judgment of the Court Appeal, explained the difference in this way.
- [42] The learned judge explained that aggravated damages are a form of compensatory damages. He said that aggravated damages can only be awarded where they are claimed by the plaintiff and where there are aggravating factors about the defendant's conduct which justify the award.
- [43] On the other hand, he explained that where exemplary damages are claimed and the court considers that there is evidence to support such a claim, damages can be awarded to punish the defendant, where there has been conduct, including oppressive, or arbitrary behaviour by police officers which deserve the exceptional remedy of exemplary damages.

[44] In **Ward v The Attorney General** High Court Suit 1495 of 2005, date of decision, 6 August 2010 Alleyne J (Ag.) (as he then was) awarded the sum of \$15,000.00 as exemplary damages for police conduct which was somewhat similar to that which occurred in this case. In **Ward** there was no claim for malicious prosecution since there were no proceedings instituted in that case.

[45] Were it not for the agreement of counsel on this aspect of damages I would have been inclined to make such an award.

[46] Before considering the disputed heads of damage I find it helpful to consider the following questions:

- (i) **Whether awards quoted in pounds sterling should be converted to Barbados dollars at an exchange rate of \$3.50?**
- (ii) **What approach should be taken to the assessment of damages? Should it be a mere arithmetical calculation based on previous cases or should it be an approach that seeks to give a fair and reasonable award based on the facts and circumstances of the case as well as other awards in similar cases?**

[47] I begin with the first issue:

In **Transport Board et al v Penniston, Civ App No. 9 of 2010, (date of decision, 20 February 2012)**, the Court of Appeal stated at paragraph 45:

“We are of the opinion that in the circumstances of this case it is unnecessary for us to make a definitive statement on the correct approach that the court should adopt to the conversion rate of the Barbados dollar in relation to awards in pounds sterling made in the English cases. Suffice to say that the rate of Bds \$3.50 to the pound has proved a convenient benchmark in view of the fact that the pound has fluctuated around that rate for a number of years.”

[48] However, in **Tyrell Oneal McCollin v Sheradon Holder and Darrie Hoyte, High Court Suit No. 972 of 2015, date of decision 30 August 2018**, Alleyne J stated at paragraphs 83 and 84:

“In, Scott v Attorney General and another [2017] UKPC 15, at paragraph 48, the Privy Council made a conversion to Bahamian currency “at current rates”. The appropriateness of that approach was not in issue in that case. However, I am not persuaded that personal injury awards in this jurisdiction should rise and fall from period to period depending on the fluctuations of an exchange rate. It is necessary to avoid the injustice of different levels of awards being made for the same types of injuries where that difference is explainable only by reference to a fluctuation in conversion rates.”

[49] A review of awards in this jurisdiction since **Penniston** has revealed that rates have varied from 3.5 as in **Ellis v Reid, High Court Suit No. 370 of 2011, date of decision 25 November 2014** to 3.0 as in *Cumberbatch v Atkins, High Court Suit No. 815 of 2011, date of decision 8 June 2015*. Erring on the side of caution, I will apply the lower rate of 3.0.”

[50] Mr. Straughn, for the claimant, has relied on the comments of the Court of Appeal in **Transport Board et al v Penniston** and utilized an exchange rate of 3.50 to convert pounds sterling to Barbados dollars.

[51] According to the historical exchange rates found on the Central Bank of Barbados' website at the time of the incident in May 2013, the exchange rate was 3.01 and at the time the claimant's memorandum of Quantum was prepared the exchange rate was 2.63. The current exchange rate is 2.72. Therefore, it would be beneficial to the claimant to use a conversion rate of 3.50 but detrimental to the defendants. However, the submissions filed on behalf of the defendants did not address this issue.

[52] In the interest of fairness to all parties, I will apply an exchange rate of 3.00, which coincidentally is the same as the exchange rate at the time the incident occurred.

WHAT APPROACH SHOULD BE TAKEN

[53] In arriving at my decision in this matter I have considered several local cases. These include:-

Demerieux v the Attorney General (HC Suit 734 of 1981) date of decision 10 February 1982, Brathwaite v The Attorney General (HC Suit 641 of 1981, date of decision 641 of 1981); Maloney v the Attorney

General (HC 490 of 1987, date of decision 6 February 1990); Attorney General v Owens (Civil appeal Nos 6 and 8 of 1988, date of decision 14 October 1988); Jewell McClean v Richard Layne et al HC Suit No 72 of 1990, date of decision 3 May 1991, and Ward v Attorney General, supra.

[54] There is no single thread running through the above cases that can be woven neatly into this decision. It is therefore not helpful to carry out a review of these cases.

[55] However there is a noticeable tension in the decisions between Rocheford J. and Williams CJ. This is evident in **Attorney General v Owens** where Williams CJ. giving the judgment of the Court of Appeal said:

[56] *“The quantum of a compensatory award is to be determined according to the circumstances of the particular case.” Rocheford J. in making his award in Owens’ case, stated that he was guided by the award in the **Demerieux** case in which the applicant was awarded \$15,000 for 3 days of unlawful detention. He went on to award Owens \$20,000 for his four days incarceration.*

[57] *I do not think arriving at the level of compensation appropriate to a particular case can simply be a matter of division and multiplication based on the amount awarded in a previous case. For persons who have never been in breach of the law, merely to be placed in custody or incarcerated would [cause] severe distress. At the other end of the scale would be the delinquent who is frequently detained and incarcerated in his*

breaches with the law. The length of the detention or incarceration is a relevant factor but in each case the aim must be [to arrive] at a figure that is fair and reasonable in the particular circumstances of the case.

[58] *Demerieux was a university lecturer who told the court of her experience and feelings during her detention in the psychiatric hospital. In neither of these cases was anything said about Herbert's or Owens' incarceration though it seems to me, in the absence of any indication otherwise, it is reasonable to infer that some inconvenience, embarrassment and distress was suffered."*

[59] Though Rocheford J's approach will lead to greater certainty of calculation and assessment, the failure to assess the particular facts and circumstances of the case will inevitably lead to unfairness and unreasonableness. I, therefore prefer the approach of Williams CJ.

[60] The approach of Williams CJ. in my view also highlights the desirability of placing all the facts and circumstances of the case before the court.

Compensation for Assault

[61] In examining the disputed heads of damage I begin by assessing the damages for assault. Mr. Straughn claimed \$292,005.00 under this head.

[62] Mr. Straughn relied on **Commissioner of Police for the Metropolis v Gerald, The Times, 26 June 1998, Court of Appeal** to support the claim for damages under this head. In that case, the Court of Appeal stated the

basic award of £20,000.00 and £10,000.00 for aggravated damages would be appropriate.

[63] In **Gerald** the claimant had difficulties seeing for a while after he suffered injuries to both eyes which were painful for about two (2) months and the pigmentation around the eyes remained discoloured for about eleven (11) months. The claimant also suffered grazing of the right shin, fractures of three middle bones (metatarsals) and swelling of the right foot; these injuries were described as “relatively severe”. The foot was in plaster for two (2) weeks and the claimant needed crutches to walk for a period of up to four (4) weeks.

[64] In the instant case, according to the medical reports of both Dr. Andrew Murray, the Police medical doctor, and Dr. Ann Auguste, the claimant’s personal physician, the claimant sustained soft tissue injuries about the body. Dr. Murray opined that the pain should dissipate with time and the injuries were expected to heal within ten (10) days. Dr. Murray did not anticipate any long-term complications. The claimant was prescribed anti-inflammatory medication. No evidence was led to suggest that the claimant’s injuries did not heal within the expected time frame.

[65] After comparing the injuries suffered by the claimant in **Gerald** with the instant claimant’s injuries, it is my view that the claim of \$292,005.00 (or

\$250,290.00 using an exchange rate of 3.00) would be excessive. The claimant's injuries are more in line with the injuries sustained in the local case of **Ward v The Attorney-General High Court Suit 1495 of 2005, date of decision 6 August 2010** which I found to be comparable in most respects to the instant case. I have, therefore, determined that the claimant should be awarded the sum of \$8,000.00.

Compensation for False Imprisonment

[66] False imprisonment is the deprivation of the claimant's freedom of movement without a lawful justification for doing so.

[67] **McGregor on Damages 18th Edition** at paragraph 37-011 states:

"The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant of loss or social status and injury to reputation..."

[68] Mr. Straughn referred the court to the conjoint appeals of **Thompson v Commissioner of Police of the Metropolis; HSU v Commissioner of Police of the Metropolis** [1998] Q.B. 498 for guidance on damages for false imprisonment given by Lord Woolf MR. At page 19, Lord Woolf MR was

of the view that the starting point should be £500.00 for the first hour and additional sums on a reducing scale. This was in order to keep damages proportionate to those paid in personal injury cases and to give a higher rate of compensation for the initial shock of arrest.

Lord Woolf MR further stated that:

“As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for twenty four hours should for this alone normally be regarded as entitled to an award of about £3,000.00.”

[69] Mr. Richards, representing the defendants, however pointed out that in **Maloney v The Attorney General, High Court Suit No. 490 of 1987**, Williams CJ opined in his decision dated 26 February 1990 that:

“the awards vary from case to case and support the view that the quantum in each case should be determined on the facts of the particular case. Judges should of course seek whatever assistance they can get from awards made by other judges.”

[70] According to the evidence, the claimant was arrested on or about 5:30 p.m. on 13 May 2013 in plain view of his minor children, mother-in-law and neighbours. He was taken to District “A” Police Station where he spent the night in custody. He was not released on bail until after midday on 14 May 2013. The claimant was therefore detained for approximately nineteen (19) hours from the time of his arrest until the time he was released on bail.

- [71] In **Ward**, Alleyne J. would have awarded the sum of \$19,000.00 under this head if we deduct the \$6000.00 awarded for the pain and suffering and loss of amenities caused by the assault.
- [72] In his view the circumstances of the assault, arrest, and detention would no doubt have merited an increased award because of the aggravating circumstances
- [73] I have taken note of the circumstances of the arrest and considered the decision in **Ward**, particularly paragraphs 74 to 112 where the local cases were reviewed. In all the circumstances, I consider that the sum of \$15,000.00 is appropriate having regard to the length of the detention and the other aggravating circumstances outlined in paragraph 70.

Damages for Malicious Prosecution

- [74] Clark & Lindsell on Torts 28th Edition at paragraph 16-05 describes the heads of compensation for malicious prosecution. That paragraph reads:
- “Compensation for malicious prosecution has three aspects. First, there is the damage to a person’s reputation. The extent of that damage will depend upon the claimant’s actual reputation and upon the gravity of the offence for which he has been maliciously prosecuted. The second aspect is damage suffered by being put in danger of losing one’s liberty or of losing property. Compensation is recoverable in respect of the risk of conviction. McGregor on Damages 16th Edition paragraph 1862 considers that an*

award under this head is basically for injury of feelings, unless there has been a conviction followed by imprisonment. The third aspect is pecuniary loss caused by the cost of defending the charge.”

[75] I now turn to the tort of malicious prosecution and consider whether the claim for damages of \$35,437.00 under this head is reasonable.

[76] The tort of malicious prosecution consists of an abuse of the process of the court by wrongfully instituting criminal proceedings against a person. The prosecution must have been without reasonable and probable cause, have been instituted or carried on maliciously, terminated in the claimant’s favour and resulted in damage to the claimant’s reputation, person and property.

[77] The claimant was charged with assaulting and obstructing the first defendant in the execution of his duty and resisting the second and third defendants in the execution of their duty. After a summary trial the claimant was acquitted on all charges, thereby supporting the claim that the prosecution was without reasonable and probable cause and was indeed malicious. This was not disputed by the defence.

[78] In his Statement of Claim, at paragraph 10, the claimant pleaded that he *“was injured in his reputation and was put to considerable trouble, inconvenience, anxiety and expense and has suffered loss and damage.”*

- [79] The claimant's reputation would have been damaged due to the fact that he was brought before the court. He was also required to go through a trial in the Magistrate's Court which lasted over a year.
- [80] If the claimant had been found guilty of the charges in the Magistrate's Court, he would have been liable to a fine or imprisonment, thereby satisfying the requirement of damage to person.
- [81] The cost to the claimant for defending the charges is pleaded under special damages, which were agreed and, therefore, would be considered under this head so as to avoid double recovery.
- [82] Mr. Straughn is seeking damages in the sum of \$35,437.00 (or \$30,375.00 using an exchange rate of 3.0); however, as Mr. Richards pointed out, in Caribbean jurisdictions, damages of that magnitude relate to malicious prosecution in serious matters. For example, in **Danny Ambo v Michael Ludat, The Attorney General of Dominica** [2011] ECSC J1017-3 where the claimant faced charges of murder and conspiracy to commit murder, the award for malicious prosecution was equivalent to approximately BDS\$37,000.00.
- [83] Mr. Richards, therefore, invited the court to consider the Jamaican cases of **Kerron Campbell v Kenroy Watson and the Attorney General and Keith Bent, Faithlyn Bent, Sonia Bent v Attorney General of Jamaica** where

the claimants sought damages for malicious prosecution on charges similar to the present claimant. The awards in those matters equated to approximately to \$2,000.00.

[84] I myself am doubtful of the value of Jamaican cases in this area because of the volatility of the Jamaican currency. I therefore reject the cases cited by Mr. Richards.

[85] I consider the Vincentian case of **Hadley et al v The Attorney General et al** (civil case nos. 228, 229, 230 and 231 of 1997 date of decision, 4 August 2000), to be an interesting case on the issue of malicious prosecution. In this case, the plaintiffs were prosecuted in the Magistrate's Court for:

- a. assaulting a police officer in the execution of his duty contrary to section 196 of the Criminal Code;
- b. assault causing actual bodily harm contrary to section 193 of the Criminal Code; and
- c. criminal damage contrary to section 267 (1) of the Criminal Code.

Adams J sitting in the High Court, awarded the sum of \$15,000.00 for malicious prosecution.

[86] I regard the sum of \$10,000.00 as appropriate in the instant case taking into account that the sum of over \$5,000.00 was accepted as special damages for the cost of defending the case in the Magistrate's Court.

[87] In respect of the claims for emotional distress; inability to acquire a sound sleep; and defamation, I agree with counsel for the defendants that they are without merit and do not deserve any further consideration.

DISPOSAL

[88] While I have taken note of the current day value of previous awards, I have been guided by the injunction of Williams CJ. that the quantum of a compensatory award is to be determined according to the circumstances of the particular case.

[89] Accordingly, judgment is entered for the claimants in the following terms:

Special damages:	\$8,558.75
Assault	\$8,000.00
Wrongful Arrest and false imprisonment	\$15,000.00
Malicious Prosecution	<u>\$10,000.00</u>
Total Award	<u>\$41,558.75</u>

[90] The defendants shall pay the claimant's costs to be assessed, if not agreed.

Cecil N. McCarthy
High Court Judge