

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW AND EQUITY DIVISION  
2017/CLE/GEN/00825**

**BETWEEN**

**ROD ANDREW BETHEL**

**Plaintiff**

**AND**

**THE COMMISSIONER OF POLICE**

**First Defendant**

**THE ATTORNEY GENERAL**

**Second Defendant**

**Before: The Hon. Madam Justice G. Diane Stewart**

**Appearances: Mrs. Tanya Wright for the Plaintiff  
Mr. Kirkland Mackey and Ms. Lukella Lindor for the First and  
Second Defendant**

**RULING ON INTEREST**

1. On the 19<sup>th</sup> March, 2021, judgment was granted to the Plaintiff who had initiated proceedings against the Defendant for malicious prosecution, unlawful arrest and false imprisonment. Resulting therefrom the Plaintiff was awarded damages, costs and interests. Consequently, the Plaintiff requested that the interest awarded should be paid from the date that the cause of action arose, i.e. prejudgment.
2. The parties elected to forego a hearing and made written submissions in support of their respective positions.

**SUBMISSIONS**

**PLAINTIFF'S SUBMISSIONS**

3. The Plaintiff submitted that the Court almost always exercises its discretion to award interest from any period and for such time as it deems up to judgment. This discretion is exercised when it is deemed just to do so and would be calculated at a discretionary rate. The Plaintiff cited the **Civil Procedure (Award of Interest) Act** which states:

**"3(1) In any proceedings tried in any court, whether or not a court of record, for the recovery of any debt or damages, the court may if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:**

**Provided that nothing in this section –**

**(a) Shall authorize the giving of interest upon interest; or**

(b) shall apply in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement or otherwise; or (c) shall affect the damages recoverable for the dishonour of a bill of exchange.

(2) Where in any such proceedings as are mentioned in subsection (1) judgment is given for a sum which (apart from interest or damages) exceeds three thousand dollars and represents or includes damages in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death, then (without prejudice to the exercise of the power conferred by that subsection in relation to any part of that sum which does not represent such damages) the court shall exercise that power so as to include in that sum interest on those damages or on such part of them as the court considers appropriate, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Any order under this section may provide for interest to be calculated at different rates in respect of different parts of the period for which interest is given, whether that period is the whole or part of the period mentioned in subsection (1)."

4. The Plaintiff submitted that a prejudgment interest at a rate of 8.25% should be awarded and that post judgment interest at a statutory rate of interest on judgments fixed at 2% over the effective prime rate presently 4.25% (6.25%). He added that prejudgment interest rates should be the same as post judgment interest rates and that interest should be awarded from the date of service of the writ to the date of trial, on non-pecuniary loss such as pain and suffering or damage to reputation or damages for unlawful arrest, false imprisonment or breach of constitutional rights which cannot be fairly measured in terms of money.
5. He cited **Jefford and Another v. Gee** [1970] 1 ALL ER 1202 where Lord Denning stated:

**"(iii) Pain and suffering and loss of amenities**

When the compensation payable to a plaintiff is not for actual pecuniary loss but for continuing intangible misfortune, such as pain and suffering and loss of amenities (which cannot fairly be measured in terms of money), then he should be awarded interest on the compensation payable. But such interest should not run from the date of the accident, for the simple reason that these misfortunes do not occur at that moment, but are spread indefinitely into the future and cannot possibly be quantified at that moment, but must of necessity be quantified later. It is not possible to split those misfortunes into two parts; those occurring before the trial and those after it. The court always awards compensation for them in one lump which is by its nature indivisible. Interest should be awarded on this lump sum as from the time when a defendant ought to have paid it, but did not: for it is only from that time that a plaintiff can be said to have been kept out of the money. This time might in some cases be taken to be the date of letter before action, but at the latest it should be the date when the writ was served. In the words of Lord Herschell LC ([1893] AC at 437), interest should be awarded 'from the time of action brought at all events'. From that time onwards it can properly be said that a plaintiff has been out of the whole sum and a defendant has had the benefit of it. Speaking generally, therefore, we think that interest on this item (pain and suffering and loss of amenities) should run from the date of service of the writ to the date of trial. This should stimulate a plaintiff's advisers to issue and serve the writ without delay which is much to be desired. Delay only too often amounts to a denial of justice. In this case, the figure on this head was £2,500. We think that

**Interest should be awarded on this sum from the date of service of the writ until the date of trial."**

6. As a result, the Plaintiff submitted that interest on the following awards should run from August 2017 to January 2019 (approximately 1 year and 6 months) at the rate of 8.25%.

<b>Unlawful arrest</b>	<b>\$60,000.00</b>
<b>Opportunity lost</b>	<b>\$12,000.00</b>
<b>Damage to Reputation</b>	<b>\$75,000.00</b>
<b>Constitutional Breach</b>	<b>\$10,000.00</b>
<b>Total</b>	<b>\$157,000.00</b>

7. The Plaintiff submitted that interest should be calculated on each week's loss of income from the week he lost his job to the date of trial, specifically \$75,000 per annum or \$6,250 per month from the 15<sup>th</sup> November, 2009 to the 15<sup>th</sup> April, 2017 at the interest rate of 8.25%. He also sought the same for loss of wages or alternatively, to add up the loss every six months and allow interest on the total every six months until trial.
8. He also contended that the legal fees were vouched as a special damage in the amount of \$10,000.00. Therefore, interest on them should run from the date of the filing of the Writ of Summons to trial.
9. For the above reasons, the Plaintiff requested the following:
- Unlawful arrest at \$60,000 – Interest from the date of writ to trial at the prejudgment rate
  - Loss of income at \$600,000 – Interest calculated on each month's loss from the initial loss to the date of acquittal, thereafter from the date the Writ of Summons was filed until judgment at the prejudgment rate
  - Legal fees in Criminal Trial at \$10,000 – Interest from the date of the Writ to trial at the prejudgment rate
  - Opportunity Lost at \$12,000 – Interest from the date of the Writ to trial at the prejudgment rate
  - Damage to Reputation at \$75,000 – Interest from the date of the Writ to trial at the prejudgment rate
  - Constitutional Breach at \$10,000 – Interest from the date of the writ to trial at the prejudgment rate
  - Prejudgment interest rate – 8.25%
  - Judgment Debt – 6.25%

#### **DEFENDANT'S SUBMISSIONS**

10. The Defendant contended that interest should be awarded at the statutory rate of 6.25% per annum, from the date of judgment to payment. This contention was based on their position that the Plaintiff's case involved tort and constitutional relief which should be calculated from the date of the judgment. The Defendant added that the delays in the action were not entirely their fault and also blamed the Plaintiff for not taking active steps in having his matter determined or disposed of by the court.

11. The Defendant relied on **Douglas Ngumi v. The Hon. Carl Bethel & The Hon. Brent Symonette 2017/GEN/001167** where Charles J stated:

**“Interest**

**[116] Mr Ngumi seeks interest not only after judgment but from the date that the cause of action arose. He relied on the judgment in *Cara Chan v Wendall Parker (1999) No. FP/88 [unreported]*, a personal injury case, to ground pre-trial interest. I do not find his argument to be convincing. I am cognizant that, in personal injuries cases, judges including myself have awarded interest from the date when the cause of action arose but I was not provided with any authority to make such an award in cases dealing with these torts and constitutional infringements.**

**[117] That said, I make an order that interest at the statutory rate of 6.25% pursuant to section 2(1) of the Civil Procedure (Award of Interest) Act 1992 as amended by the Civil Procedure (Rate of Interest) Rules, 1992, be awarded to Mr. Ngumi from today’s date to the date of payment.”**

## **DECISION**

12. Section 3 of **The Civil Procedure (Award of Interest) Act, Ch. 80**, gives the Court the discretion to make an order for an award of interest, at such rate as it thinks fit, on the whole or any part of the debt or damages, for the period between the date the cause of action arose and the date of judgment.
13. Isaacs J (as he then was) in **Balmoral Development and others v. Cottislaw (a firm) and another; Cottis and another v. Kinsale and another [2017] 1 BHS J. No. 73** confirmed this discretion. He considered certain English authorities on the point.

**“17. As Lord Salmon said in *General Tire & Rubber Co. v. Firestone Tyre & Rubber Co. Ltd. [175] 1 W.L.R. 819*:**

**Interest is not awarded as punishment against a wrongdoer for withholding payments which he should have made. It is awarded because it is only just that the person who has been deprived of the use of the money due to him should be paid interest on that money for the period during which he was deprived of his enjoyment. No one suggests that the appellants acted dishonestly or unreasonably in withholding the money for five years; nor that they caused any of the delay in the granting of the patent. This, however, in my view, has little relevance. They enjoyed the use of the money during the whole of this time and in law it is deemed to have been due to them from the beginning of that period.**

**18. The principle was re-visited in the Law Commission Report of Pre-judgment interest on Debts and Damages (2004) where it is stated paragraph 1.9:**

**“Awards of interest are designed to compensate claimants for the cost of being kept out of their money. They should put claimants into the position they would have been in had the debt or damages been paid when they fell due. We wish to introduce a system of pre-judgment interest that provides fair compensations to claimants without unduly penalizing defendants and which encourages faith in the civil justice system by meeting the legitimate expectations of litigants. On the other hand, we do not wish to increase disputes or legal costs.”**

14. Accordingly, pre-judgment interest may be awarded to put parties into the position that they would have been in had the cause of action not arisen. It has been established however, that prejudgment interest should not be awarded in respect of loss of future earnings/loss of earning capacity or estimated repairs which constitute future loss. The rationale behind these findings is that because the award of interest is to attempt to

place a party in a pre-action position, the loss would not have existed at the date of the cause of action.

. As Lord Denning M.R. stated in **Jefford and Gee [1970] 1 ALL ER 1202**, a judge should give the present value at the date of the trial:

**“(ii) Loss of future earnings**

**Where the loss of damage to the plaintiff is *future pecuniary loss*, eg loss of future earnings, there should in principle be *no* interest. The judges always give the present value at the date of trial, ie the sum which, invested at interest, would be sufficient to compensate a plaintiff for his future loss, having regard to all contingencies. There should be no interest awarded on this because a plaintiff will not have been kept out of any money. On the contrary, he will have received it in advance.**

**In this case the judge awarded £3,500 general damages, but did not divide it up. It was suggested before us that £1,000 was for future loss of earnings and £2,500 for pain and suffering and loss of amenities. In accordance with the above principle, interest should not be awarded on the £1,000 for future loss of earnings.”**

15. Interest is therefore awarded on the damages assessed as follows:

1. \$697,000.00 at 2.5% per annum from the date of the issuance of the writ of summons to the date of judgment;
2. \$60,000.00 at 2.5% per annum from the date of the issuance writ of summons to the date of judgment

16. Interest is awarded post judgment on the full judgment debt at the statutory rate of 6.25% until payment.

17. I make no further order as to costs.

**Dated this 11<sup>th</sup> day of May, 2021**



**The Hon. G. Diane Stewart**