

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION

Action No.2019/CLE/gen/01530

BETWEEN

MICHAEL RUDOLPH MARTIN

PLAINTIFF

AND

COMMISSIONER OF POLICE

AND

ATTORNEY GENERAL

AND

CORPORAL 3880 FRAZIER

DEFENDANTS

Before: Deputy Registrar Carol Munnings Misiewicz

Appearances: Mr. K. Melvin Munroe for the Plaintiff

Mrs. Kenria Smith for the Defendants

Hearings: 16 February 2021, 13 April 2021, 6 May 2021, and 9 June, 2021

DECISION

INTRODUCTION

1. This is the assessment of the damages due to the Plaintiff in respect of the claims made in his Writ of Summons filed on 31 October 2019 for unlawful arrest and detention that occurred on 1st November 2018 and continued until his release on 3rd November 2018.

2. The Statement of Claim, which was indorsed on the Writ, avers that Police Officers unlawfully arrested and detained the Plaintiff and subjected him to inhuman and degrading treatment. Paragraph 4 says:

"The 3rd Respondent unlawfully arrested and detained the Plaintiff and caused the Plaintiff to be subjected to inhuman and degrading treatment due to the unlawful arrest and detention."

3. This is the only place in the pleadings where the cause of action is mentioned. The prayer at the end simply asks for "Damages to be assessed." This fact will be relevant when I come to review the issue of the amount to be awarded for the Plaintiff's claim.
4. Although the Defendants entered an Appearance (on 13th November 2019) they did not file a defence. Accordingly, pursuant to an application for leave to enter Judgment in Default of Appearance, an Order was granted by Justice Charles on 13th November 2020 giving the Plaintiff leave to enter judgment in default of defence. Judgment was then signed on 25th November 2020 for damages to be assessed. The Plaintiff relies upon the judgment of Stewart J dated 24th June 2020 in **Kevin Renaldo Collie v The Attorney General 2017/CLE/gen/00916** to show that an unlawful arrest is a tort which gives rise to damages, and an unlawful arrest is a false imprisonment.
5. Since there is already a judgment in place the issue of whether or not the Plaintiff was unlawfully arrested and detained is settled and does not arise. I mention this because much of the evidence in the Witness Statements and the allegations in the Statement of Claim addressed liability rather than quantum.

FACTS PERTAINING TO PLAINTIFF'S DETENTION

6. The Plaintiff took out a Notice of Appointment to Assess Damages on 12th January 2021. The evidence of the circumstances and conditions of his time in custody are contained in the Plaintiff's Witness Statement filed 9th March 2021, and the Supplemental Witness Statement that was filed on 23rd April 2021. I found the Plaintiff to be a truthful witness; I accept the evidence presented in his witness statements and his oral testimony at the hearing.
7. I find that at the time of this incident the Plaintiff was 52 years old. He was accosted by Police officers in his home in the middle of the night (or early hours of the morning since

it was around 4:00 AM). He was shown a warrant that had 'Michael Martin Jr' on it. The Plaintiff told the officer that he was Michael Martin Sr., and that he was not the person they were looking for, but the officer ignored him and arrested him anyway. He was forced to get dressed in the presence of the officers, meaning that he was given no privacy. The Plaintiff was escorted out of his home to an unmarked vehicle, placed in handcuffs put into the vehicle and taken to a Police Station.

8. Once the Plaintiff was at the Carmichael Road Police Station he was photographed and then placed in a cell. After a period of time in that location he was moved to the Central Detective Unit, kept in a cell there, and then later was returned to the Carmichael Road Police Station. The conditions at each location were equally unpleasant. It was unclear to me which station he was describing, but I accept his evidence as to the nature of what it was like. He says that he was in a cell with no toilet, just a concrete slab floor. It was a small room, about 5 feet by 6 feet, with four other males occupying the cramped space. It was filthy and contained garbage of containers from previous meals. He had to sleep on the floor, use his shoes for a pillow, and had to urinate in plastic bottles.
9. He was kept in these unhygienic and unpleasant conditions for a total of 62 hours. The Plaintiff further testified that he had no visitors save for his attorney, although he was allowed to receive meals and medications brought by his wife.
10. The Plaintiff was eventually released without ever being charged for any offence. The detention record that was exhibited to his Supplemental Witness Statement reflects that the Plaintiff was arrested at 4:25 AM, arrived at the Carmichael Road Police Station at 4:37 AM, and remained in custody for two and a half days until he was released on 3rd November 2018 at 6:00 PM.
11. Essentially the evidence on the assessment was uncontested by the Defendants. There was no dispute either as to the fact of the arrest or the conditions under which the Plaintiff was held. The cross-examination of the Plaintiff by Mrs. Smith was perfunctory and focused mainly on what was said to the Plaintiff when the Police went to his house. Counsel for the Defendants did file an affidavit but again this really spoke to liability, which was not in issue; it did not contain any relevant facts impacting the quantum of the Plaintiff's damages.

QUANTUM

12. On the question of quantum of damages, the Plaintiff is seeking the sum of \$30,000 for Unlawful Arrest and False Imprisonment, while the Defendants say the appropriate measure of damages is \$15,000. Mr. Munroe cited a number of cases to support the Plaintiff's claim for damages. I found the following cases submitted on the Plaintiff's behalf to be particularly relevant and helpful.
13. In ***Kevin Renaldo Collie v Attorney General (2016) CLE/gen/00916***, the Plaintiff, who was arrested while at work, on his job as a Customs Officer, was awarded \$35,000 for unlawful arrest and a false imprisonment lasting 32 hours. In ***Gilford Lloyd v Chief Superintendent Cunningham et al (2016) CLE/gen/00062*** a shotgun was put to the Plaintiff's forehead, and he had to stand in handcuffs for approximately 30 minutes in the present of onlookers. Lloyd was awarded \$30,000 for his false imprisonment. And in ***Robert Kane v Attorney General et al (2011) CLE/gen/FP/00170***, Kane was arrested and detained by Defence Force Officers who boarded his boat and took control of it. Kane was eventually handed over to the Police, who kept him in custody for 67 ½ hours. He was awarded damages of \$30,000.
14. Counsel for the Defence cited three cases but only supplied one of them to this Court. In ***Antoine Justin Russell v The Attorney General and the Commissioner of Police SCCivApp. No.186 of 2017***, the Plaintiff was held in a Police cell for 27 hours despite having assured the officers (and supplying them with evidence) that he was not the person named in two outstanding bench warrants. The judgment of the Court of Appeal does record details of the circumstances surrounding Russell's detention as the learned judges were concerned with examining the lawfulness of the appellant's arrest and detention. The only mention of the nature of the detention is contained in paragraph 15 of the judgment, where their Lordships state: "Following his arrest, the appellant was detained for some 27 hours in a cell at the East Street South Police Station before he was transported by air to the Central Police Station in Freeport, Grand Bahama."
15. Their Lordships, being satisfied that Russell's arrest and detention were indeed unlawful, allowed his appeal. They considered that an award of \$10,000 "would adequately compensate the appellant for his wrongful arrest and false imprisonment. They said, at paragraph 81, *"This was, in our view, a straightforward case involving the wrongful arrest and detention for some 31 hours of a person who (as it later turned out) was not the correct*

person for whom the two bench warrants had been issued.” Their Lordships then went on to say (also in paragraph 81) that:

“Additionally, we consider that the appellant’s arrest involved no aggravating features which would have qualified him for an award of aggravated or exemplary damages. Furthermore, as we indicated earlier, there also was no “special feature” in the sense of an arbitrary use of state power which would have qualified him for an award of damages for Constitutional redress. In the circumstances, we consider that an award of damages of \$10,000.00 will adequately compensate the appellant for the wrongful arrest and detention which occurred in this case.”

16. Following the guidance given by the Russell case cited above, I find that the circumstances surrounding the arrest and detention of this Plaintiff are less harsh or extreme than in the **Collie, Cunningham** and **Kane** cases cited by Mr. Martin, but more harsh than in **Russell’s** case, in particular as regards the degrading treatment of having to urinate in a plastic bottle, sleep on the floor using shoes for a pillow, and being kept in a cramped cell with four other persons. The Plaintiff Martin was also detained for a longer period – 62 ½ hours as opposed to 31 hours – than in **Russell’s** case. I therefore consider that a sum less than \$30,000.00 but more than \$10,000 is appropriate. I award the Plaintiff the sum of **\$20,000.00** for damages for unlawful arrest and false imprisonment.
17. In his written submissions Mr. Munroe also put forward claims for (i) breach of constitutional rights – for which he said his client should be compensated in the range of \$30,000 to \$40,000, (ii) exemplary damages – for which he should be compensated \$10,000, and finally (iii) the sum of \$20,000 for vindictory damages. Mrs. Smith on the other hand submitted that breach of constitutional rights and a claim for damages for such must be specifically pleaded. As I pointed out at the beginning of this judgment there was only a general claim for ‘Damages.’ No claim for constitutional breach was pleaded. Nor was a claim made in the pleadings for exemplary or vindictory damages. I therefore make no award for damages under any of these headings.
18. In the event I am wrong on this point, I would rely on the judgment of the Court of Appeal in Russell’s case supra particularly at paragraph 79 of the judgment. I find that the claim for damages for unlawful arrest and false imprisonment adequately covers the Plaintiff’s claim for the wrongful actions of the police in their official capacity and no further award for exemplary or aggravated damages is indicated upon the facts of this case.

COSTS

19. Following the last hearing date, I asked counsel to send me their written submissions on costs, so that I could include the award for costs when I delivered my decision, as we had not covered this topic during the virtual hearings. Both counsel duly complied within the 3-day time limit I gave them, and I thank them for their compliance and the helpful submissions to the Court.

20. Briefly, Mrs. Smith submitted that the Plaintiff should receive \$5,000 towards his costs, and Mr. Munroe submitted that the Plaintiff should receive \$35,000 in costs. After reviewing the file I have determined to award the sum of \$9,300 to the Plaintiff, as costs of the application and the action, as explained below.

21. I have taken into consideration the two appearances before Justice Charles, and 3 appearances before me, and so allow \$5,000 for court appearances by Plaintiff's counsel. I then allocated a sum for preparation and review of correspondence, preparation of skeleton arguments, drafting of court documents (including orders, notices, summonses and so on), and made allowance for disbursements including printing, and the filing fee of \$300 payable on filing the writ.

22. As a result I award the following amounts:

Brief fee	-	\$1,500
Appearances	-	\$5,000
Skeleton Arguments	-	\$1,000
Drafting documents	-	\$500
Correspondence	-	\$750
Printing, service fees etc.	-	\$250
Filing fees	-	\$300
<i>Sub-total</i>	-	<i>\$9,300</i>
<i>Plus VAT @ 12%</i>	-	<i>\$1,116</i>
TOTAL	-	\$10,416

23. In conclusion, the Plaintiff's damages are assessed in the sum of **\$20,000.00** for false imprisonment, and **\$10,416.00 for legal costs**, including VAT.

Dated the 31st day of August, A.D. 2021



Carol Munnings Misiewicz
Deputy Registrar