

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT OF THE BAHAMAS
COMMON LAW AND EQUITY DIVISION
2013/CLE/gen/FP/00399**



**BETWEEN
PAUL WALLACE WHITFIELD
Plaintiff**

**AND
THE ATTORNEY GENERAL
1st Defendant**

**AND
THE COMMISSIONER OF POLICE
2nd Defendant**

**AND
CORPORAL 265 COREY DAMIANOS
3rd Defendant**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley
APPEARANCES: Mr. Harvey Tynes, QC and Tanisha Tynes-Cambridge for the Plaintiff
Mrs. Sophia Thompson-Williams for the Defendants
WRITTEN SUBMISSIONS: Plaintiff Submissions dated December 29, 2020;
Defendants Submissions January 28, 2021

ASSESSMENT OF DAMAGES JUDGMENT

Hanna-Adderley, J

Introduction

1. The Plaintiff's claim in this action was for damages for assault and false imprisonment of the Plaintiff on November 12, 2012 at Central Police Station, Freeport, Grand Bahama by the 3rd Defendant, a police corporal under the direction and control of the 2nd Defendant and in the performance or purported performance of his functions.
2. The Court by its Judgment dated November 17, 2019 found at paragraphs 72 and 87 that the 3rd Defendant assaulted the Plaintiff on November 12, 2012 and the Plaintiff's subsequent arrest and imprisonment was unlawful. As Judgment was entered for the Plaintiff on the issue of liability the Court provided that it would hear Counsel on the

assessment of damages on an adjourned date. Due to the COVID-19 Pandemic, following a request from Counsel for the Plaintiff for the Assessment to be heard on the papers, the Court acceded to the request and now provides its Ruling on the same.

3. Counsel for the Plaintiff relies on his Submissions on Damages dated December 29, 2020 and Counsel for the Defendants relies on her Submissions on Damages dated January 28, 2021.

Submissions

4. Counsel for the Plaintiff, Mr. Harvey Tynes, QC submits in part that following the specific findings of fact made by the Court throughout its Judgment it was determined at paragraph 72 that the 3rd Defendant assaulted the Plaintiff and the subsequent arrest and imprisonment was unlawful. He also submits that at paragraph 90 of the Judgment the Court also found that there were no aggravating or special features that would qualify the Plaintiff for an award of aggravated or exemplary damages. Mr. Tynes, QC refers to the case of **Tynes v Barr 45 WIR 7** and submits that that case is the starting point when approaching the issue of a suitable award of damages for assault and false imprisonment. He summarizes the facts of that case as the Plaintiff, an Attorney sued a Police Officer (Royal Bahamas Police Force) and the Attorney General for assault, false imprisonment, malicious prosecution and breach of his Constitutional rights under Section 19 of the Constitution following his unlawful arrest and maltreatment. Further, he states that the learned Judge awarded the Plaintiff the global sum of \$75,000.00 for the assault and battery and false imprisonment and that the award included an unspecified sum representing exemplary damages. He also refers to the case of **Barr v Tynes, Civil Appeal No. 18 of 1994** where the Justices of Appeal considered the award made by Dame Joan Sawyer, then Chief Justice. He states that the Learned Justices did not interfere with the award of \$75,000.00 given for false imprisonment and assault which included the unspecified sum representing "Exemplary Damages" and that at paragraph 46 of their Judgement expressed that damages should be awarded under each individual head and not on a global basis.

Issues

5. The Court in this case must determine:-
 - a. Whether the Court has the jurisdiction to revisit its Judgment; and if so whether there are exceptional circumstances in which it should;

- b. What are reasonable sums to award the Plaintiff under each head of damage?

Jurisdiction to Revisit Order/Judgment on Exemplary/Aggravated Damages Not Perfected

6. It is accepted that the Court has the jurisdiction to review or recall a judgment or order made before it is entered, drawn up or perfected subsequent to an application made by a party or on the Court's own initiative. Mr. Tynes, QC has asked this Court to revisit its decision at paragraph 90 of the Judgment.
7. Paragraph 90 of the Judgment states:- "In addition to the above, I do not find that there are any aggravating or special features that would qualify the Plaintiff for an award of aggravated or exemplary damages."
8. Mr. Tynes, QC submits that the trial Judge should revisit her trial decision at paragraph 90 of the Judgment were she determined that there were no aggravating or special features that would qualify the Plaintiff for an award of aggravated or exemplary damages. He submits that the reason for doing so is found in the passage from the Report in **Rooks v Barnard [1964]** A.C. 1169 where Lord Devlin identified two specific categories of cases where it would be appropriate to award aggravated or exemplary damages:- (i) "Where there is oppressive, arbitrary or unconstitutional conduct by servants of the Government" and (ii) "Where the Defendants' conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the Plaintiff." See **Tynes v Barr (supra)** at page 21, Letter J. He also refers to paragraph 50 of the decision in **Barr v Tynes (supra)** where the Justices of Appeal stated:- "The circumstances of the present case...requires the Court to award damages to demonstrate publicly the strongest disapproval of what occurred and make it clear to the police that conduct of this nature will not be tolerated by the Courts."
9. Mr. Tynes, QC asserts that exemplary and aggravated damages are punitive in character and serve to make an example of the Defendant and are usually more than would be normally awarded and may be given where the Defendant has "aggravated" the matter by his conduct. Further, he asserts that an award of aggravated or exemplary damages is ordinarily made where there is oppressive, arbitrary or unconstitutional conduct by a servant or agent of the Government.

10. Therefore, he submits that based on the facts as found by the trial Judge and the observations made by the Bahamas Court to Appeal in **Barr v Tynes (supra)** the instant case falls within the first category of cases identified by Lord Devlin. Further, it is his contention that the Court is "required" to include an award of aggravated or exemplary damages to the Plaintiff. He makes the following observations of the Court's finding and the findings in **Tynes v Barr** in support:-

- a. That the dragging for three minutes and the mauling of the Plaintiff's face by Corporal Damianos were far more violent and humiliating than what was done to the Attorney in **Tynes v Barr**;
- b. That the maltreatment of the Plaintiff was carried out in the immediate presence and in the full view of his client;
- c. That the period of imprisonment of the Plaintiff (six hours) was considerably longer than the Attorney's imprisonment in **Tynes v Barr** (9:35am to 12:15 pm, less than three hours);
- d. That in both cases charges were laid against the Attorney in an unsuccessful attempt to justify the unlawful conduct of the "arresting" officer, both cases were dismissed by the Magistrate following the close of the Prosecution's case.
- e. That in **Tynes v Barr** the Attorney claimed malicious prosecution and a separate award for damages was given in the sum of \$100,000.00 in 1994 which would exceed the sum of \$250,000.00 if awarded presently as a result of inflation. However, in the instant case the Plaintiff did not make a claim for malicious prosecution which was likely to succeed;
- f. That in **Tynes v Barr** the Defendants admitted liability prior to the end of the trial and profusely apologized to the Attorney, orally and in writing in open Court. However, in the instant case liability was contested by the Defendants to the end of trial and the Defendant never apologized to the Plaintiff.

11. In support of the facts above, Mr. Tynes QC submits that a Judge is entitled to revisit his/her decision any time before an Order is drawn up and perfected refers the Court to the case of **Millensted v Grover House (Park Lane) Limited [1937]** 1 All E.R. 736. In that case he stated that the Judge revisited his award of Damages before an Order was drawn up and the Court of Appeal held that he was entitled to do so. He also refers to **Re L & B [2013]** 2 All E.R. 294 and states that at paragraph 19 the Court stated "...there is

jurisdiction to change one's mind up until the Order is drawn and perfected....There is no jurisdiction to change one's mind thereafter unless the Court has an expressed power to vary its own previous Order." Mr. Tynes, QC submits that to date no Order has been drawn up and perfected in relation to the Judgment delivered on November 17, 2020 and as such the learned Judge has jurisdiction to allow an element of aggravated or exemplary damages to be included in the award of damages for assault and false imprisonment.

12. Mr. Tynes, QC states that in **Tynes v Barr** the Court was invited by Counsel for the Government to include some reference to the law as it related to an arrest without warrant by the police "in the hope that it would help prevent any recurrence of the kind of behavior exhibited by the police in the incident out of which the case arose" (page 26, letter "d"). Further, the Court accepted the invitation of Counsel and proceeded to set out the relevant principles of law as contained in several English landmark cases included **Christie v Leachinsky and Liversidge v Anderson**. He submits that the case of **Tynes v Barr** was not the first case of its kind to come before the Supreme Court of the Bahamas. He contends that over the past 35 years the Supreme Court of The Bahamas has repeatedly sent a message to police officers that "tort does not pay" and states that cases such as **McDonald v Field v The Attorney General, Merson v Cartwright and Antoine Russell v The Attorney General** are well known. However, police officers continue to engage in conduct which is arrogant, oppressive, unconstitutional and repugnant to their duty as servants of the people. Therefore he submits that in the present case the Court should send a strong message to the police by making an award of damages in the sum of One Million Dollars (\$1,000,000.00) under the head of "aggravated and exemplary damages" alone and the amount takes into account the effect of inflation on the value of the Bahamian dollar since the decision in **Tynes v Barr** in 1994.
13. Counsel for the Defendants, Mrs. Sophia Thompson Williams in reply submits that the Learned Judge in this case found that the Plaintiff's claims for damages for breach of Article 19(1) of the Constitution was not made out as the evidence lead at trial did not disclose any aggravating or special features which would justify such a claim. Further, she submits that on the facts presented at trial the Plaintiff could be adequately compensated in his parallel claims in tort and the Court held that this was a proper case for the proviso under Article 28(1) of the Constitution to be invoked.

14. In response to the Plaintiff's request that the Court revisit paragraph 90 of the Judgment, she refers the Court to paragraphs 11, 12 and 15 of the decision of Justice Charles in **Surf and Turf Ltd and Deltec Bank and Trust Limited v Maria Iglesias Rouco et al** 2017/CLE/gen/00937. It is her submission that similar to then Chief Justice Michael Barnett's position in **Re: Petition of Henry Armbrister 2007/CLE/gen/qui01438 & 2008/CLE/qui/845** (which was referred to by Justice Charles in Surf and Turf) that only in the most exceptional circumstances he would revisit a decision made by himself, that in the instant case there are no exceptional circumstances contained in the Plaintiff's submissions that would cause the Learned Judge to revisit her Judgment.

Analysis

15. While it is not disputed that the Court does indeed have the jurisdiction to alter or vary its decision, order or Judgment before the same is drawn up or perfected, based on the authorities, it is well established in this jurisdiction that such exercising of that discretion is limited to exceptional circumstances. **Re Barrell Enterprises and others [1972]** 3 All ER 631, CA

16. In **Surf n Turf (supra)** relied on by the Defendants in this case, Justice Indra Charles in determining whether the Court had the jurisdiction to reconsider an order made but not perfected referred to Russell, LJ in Re Barrell Enterprises and others at page 636 where he stated "*When oral judgments have been given, either in a court of first instance or on appeal, the successful party ought save in most exceptional circumstances to be able to assume that the judgment is a valid and effective one*". Further, he stated at page 636 "*The cases to which we were referred in which judgments in civil courts have been varied after delivery (apart from the correction of slips) were all cases in which some most unusual element was present.*" She also distinguished the case of **Re L v B (Children) [2013]** UKSC 8 relied on by Counsel for the Plaintiff (and also the same case relied on by Mr. Tynes, QC in the instant case) on the basis that the Court's determination in that case that the Court was not bound by the Barrell case was predicated on the English Civil Procedure Rules which governs civil procedure and practice, rules that the Bahamas does not yet have nor operate under at this time. She continued that the same reconsideration of an order made to be varied before perfection was placed before Justice Winder in **RTL v ALD and others [2015]** 1 BHS J. No. 82 whereby he affirmed that the Re Barrell jurisdiction remains the law of The Bahamas. She also identified other cases where the

Courts adopted the approach in *Re Barrell*. See **Hong Kong Zhong Qing Development Company Limited v (1) Squadron Holdings SPV0164HK, Ltd et al 2016/CLE/gen/01295; Compagnie Noga D'Importation et D'exportation SA v Abacha (No. 2) [2001] 3 All ER 513**. Moreover, Justice Charles referenced the case of **Edmund v The State TT 2007 CA 39** where the Trinidad and Tobago Court to Appeal was of the view that the delivery of its oral judgment at the end of the hearing of the appeal was immediately binding and considered itself *functus officio*.

17. Taking into consideration the view taken by Russell LJ in *Re Barrell* that when oral judgments have been given, either in a court of first instance or appeal the successful party ought, save in the most exceptional circumstances be able to assume that the judgment is a valid and effective one, I will consider the reasons submitted by Mr. Tynes, QC above.
18. He submits that exemplary/aggravated damages are punitive in nature and serve to make an example of the Defendant and such an award is made where there is oppressive, arbitrary or unconstitutional conduct by a servant or agent of the Government. He also refers the Court to the passage in **Rookes v Bernard** and paragraph 50 of the case of **Barr v Tynes** in support of this contention. The Court takes no issue with the law relating to the nature of exemplary/aggravated damages and an award of the same. Mr. Tynes, QC in his submissions above at paragraph 9 outlines the facts as found by this Court to which he says qualifies the Plaintiff for an award of aggravated or exemplary damages. He also compares the findings of fact made in the instant case to the facts of the case in **Tynes v Barr** whereby the Plaintiff was awarded damages which included in the global sum aggravated/exemplary damages. However, also in the instant case, the Court stated at paragraphs 88 and 89 under the rubric "Breach of Article 19(1) Constitutional Rights" as follows:-

"88. The Plaintiff also seeks damages for breach of Article 19(1) of the Constitution which gives protection for citizens of the Bahamas from arbitrary arrest or detention.

89. While the Court has determined that the Plaintiff's arrest was indeed unlawful, I am not minded to award damages for breach of his Article 19(1) right. The Plaintiff's claim for the breach is adequately covered by his parallel claim for damages for the wrongful arrest and false imprisonment. Moreover, there was

nothing capricious or arbitrary about the circumstances of the Plaintiff's arrest that would make it appropriate to grant him Constitutional relief. I do not find that the instant case disclosed any special feature by way of the evidence before me that would justify an award of damages by way of constitutional redress for which he could not be adequately compensated in his parallel claims in tort. In short, this is a proper case for the proviso to Article 28(1) of the Constitution to be invoked."

19. During the trial, the Court heard and considered the evidence by way of Witness Statements and viva voce testimony from the witnesses. The Court had the opportunity to listen and observe the demeanour of the witnesses and made its findings of fact in favour of the Plaintiff.
20. The Plaintiff in his Statement of Claim set out his claim for aggravated and/or exemplary damages for the oppressive arbitrary conduct by the 2nd Defendant and his servants or agents including the 3rd Defendant. In support of this part of his claim he relied on the fact "assaulting the Plaintiff by grabbing his left forearm, pushing the Plaintiff, mauling the Plaintiff's face and forcing the Plaintiff against the wall of the passageway as pleaded in paragraph 2 hereof."
21. Mr. Tynes, QC compares the findings of this Court and those of the Court in **Tynes v Barr** to further justify his submission that the Plaintiff in this case suffered a greater and aggravating experience than the Plaintiff in **Tynes v Barr**. Further, he contends that in **Tynes v Barr** the Plaintiff's award contained the element of aggravated damages and as such in the instant case the same should be reconsidered as the Plaintiff suffered a greater and aggravating experience. For completeness, I wish to reiterate the findings of the Court in **Tynes v Barr** as set out by the Court of Appeal in **Barr v Tynes** at paragraph 13 of its Judgment.

"13.

- (1) On being approached by P.C. Barr the respondent told the officer that he was an attorney-at-law and that his name was Harvey Tynes.*
- (2) The respondent on being arrested was frog marched into the police booth by P.C. Barr who was gripping the respondent's trousers from the back.*
- (3) The respondent was ordered to put his hand on the wall and to spread his legs and was then bodily searched, including his private area by P.C. Barr who was searching by patting through his clothing.*

- (4) *The respondent was forcibly thrust into the seat of a police jeep behind the driver.*
- (5) *The jeep was on an open sided one which allowed members of the public, some of whom were known to the respondent and who would have recognized him, to see not only that he was under arrest but that he was in fact handcuffed as well.*
- (6) *The respondent was handcuffed with a rusty handcuff which was forcibly closed on his wrist.*
- (7) *When the respondent requested the use of a Telephone to call a lawyer, he was told that he would have to wait.*
- (8) *The respondent was taken to the police station where he was taken to a bathroom and strip searched.*
- (9) *Respondent saw one Mr. Miller at the station and shouted to him to call Mr. Thomas Evans an attorney-at-law. P.C. Barr then responded, "Shut up boy, you are in a police station and I am dealing with you".*
- (10) *The respondent was taunted by P.C. Barr while in custody.*
- (11) *The respondent was kept in custody from about 9.35 a.m. until 12.15 p.m. While in custody he was placed in a cell on three occasions.*
- (12) *The prosecution against the respondent was instituted without any reasonable belief that he had committed the offences charged.*
- (13) *Prosecution and defence of the civil trial was persisted in.*
- (14) *The respondent was fingerprinted: when he objected P.C. Barr said, "Very well, we will just hold you until Monday morning and take you before a Magistrate to obtain an order".*
- (15) *On leaving the station P.C. Barr laughed and said, "It was nice meeting you. Mr. Tynes, I hope we will meet again, under different circumstances.""*

22. The findings of fact by the Court in the instant case when compared with the findings in **Tynes v Barr** are in my view, in stark contrast and as such I am of the opinion that it was well within the Court's purview in **Tynes v Barr** to include in the award of damages the element of aggravated/exemplary damages.

23. I once again return to the principles established in **Re Barrell** in considering whether I should revisit my decision on the issue of an award of aggravated/exemplary damages and find that the Plaintiff has failed to show this Court the exceptional circumstances upon which I should revisit my decision. Further, if the Plaintiff wishes to challenge my finding that there were not aggravating or special features that entitle him to an award of aggravating/exemplary damages he has a right of appeal.
24. Therefore, I move on to the assessment of damages under the heads of assault and false imprisonment.

Award of Damages for Assault and False Imprisonment

25. On the effect of inflation, Mr. Tynes, QC refers to the observation made by Dame Joan Sawyer in **Tynes v Barr** at page 24:- "*Inflation is a fact of life in The Bahamas and has been for some years now...I must therefore bear in mind that the purchasing power of \$9,000.00...damages in the Fields case in 1986 was much greater than the purchasing power of that sum of money in 1994.*" Additionally, he refers to then Chief Justice Telford George's statement at paragraph 15 of his decision in **Matuszowicz v Parker** on considering the usefulness of adopting legal precedents from other jurisdictions "*The most useful precedents could in my view be drawn from Bermuda and the Caymans which have similar legal systems and in which economic and social conditions are most like ours. They are like ourselves comparatively small jurisdictions. Cases are not likely to be many and in the absence of Law Reports access to decided case will not be easy.*" Further, Mr. Tynes, QC refers to the decision in **Wayne Deshields v Heather James**, a case from the Bermuda Court of Appeal where the Court said "...We think it correct to take into account the fact that a degree of inflation has taken place in England. As a rough guide awards there should be adjusted by at least 5% a year to allow for inflation."
26. He submits that the Court should use the sum of \$75,000.00 awarded in **Tynes v Barr** in 1994 as a starting point in determining an award of damages under assault and false imprisonment although that sum included an award for aggravated damages. Therefore, taking into account the adjustment related to inflation by at least 5% per year over the past 26 years and 9 months (at the date of the Plaintiff's Submissions on the Assessment of Damages) of the award of \$75,000.00 made in 1994, the award to the Plaintiff for assault and false imprisonment would be \$176,250.00 but would include the element of aggravated and exemplary damages. However, he submits that if the Court is minded to

award the sum of \$1,000,000.00 as aggravated and exemplary damages, the Plaintiff would readily concede that the sum of \$176,250.00 could be "roughly" allocated under the individual heads for (i) assault and battery the sum of \$58,750.00; (ii) false imprisonment the sum of \$58,750.00 and (iii) aggravated/exemplary damages the sum of \$58,750.00. Additionally, he submits that the sum of \$58,750.00 under the head of assault and battery should be increased to \$75,000.00 because of the greater measure of violence meted out to the Plaintiff and that the sum of \$58,750.00 under the head of false imprisonment should be increased to \$65,000.00 because of the longer period of imprisonment of the Plaintiff.

27. Therefore, Mr. Tynes, QC contends that a reasonable award to the Plaintiff for maltreatment by Corporal Damianos on November 12, 2012 would be the sum of \$75,000.00 under the head of assault and battery, the sum of \$65,000.00 under the head of false imprisonment and the sum of \$1,000,000.00 under the head of aggravated/exemplary damages with a total award of \$1,140,000.00.
28. Mrs. Thompson Williams in reply has referred the Court to the case of **Britney Neymour and Lillyetha Miller v the Attorney General and the Commissioner of Police** CLE/gen/00770 of 2017 and submits that that case is a more apposite and recent case when considering an award for aggravated and exemplary damages. She states that Justice Winder found that the Plaintiffs had suffered breaches of their Constitutional rights (Articles 17(1), 19(1) and 25(1)) but the Court did not find any evidence to support such a duplicitous claim and no aggravating features were seen in the evidence at trial to justify the same. Justice Winder at paragraph 19 of his Judgment accepted the account of the First Plaintiff's experience while at the police and found that the behaviour displayed by the officers and the treatment were wholly unacceptable for law enforcement officers. The Court awarded both Plaintiffs the sums of \$15,000.00 and \$5,000.00 respectively for aggravated damages and a global sum of \$40,000.00 under the head of arbitrary/wrongful arrest and false imprisonment.
29. She submits that in the instant case, the learned Judge having heard the evidence and observed the demeanour of the witnesses did not find any aggravating or special features and as such concluded that no such features were present. Whereas in **Tynes v Barr** and **Merson v Cartwright** the court in those cases awarded exemplary and aggravated damages following evidence of aggravating or special features lead at trial and accepted

by the trial judge. She further submits that it is not enough to compare the circumstances of the instant case and **Tynes and Barr** as both Plaintiffs are Attorneys-at-law, they were both detained, one for six and a half hours and the other for three hours and as such are entitled to a similar award as the facts and findings of the Court are quite dissimilar. She contends that the Court in **Tynes v Barr** viewed the facts to be very aggravating and a global award of the sum of \$75,000.00 for assault and battery, false imprisonment, aggravated damages and exemplary damages were given, however the Justices of Appeal in **Barr v Tynes** stated that they were unable to say how the amount of \$75,000.00 was made up.

30. Mrs. Thompson Williams also refers to paragraph 9 of **Merson v Cartwright** whereby their Lordships addressed the issue of overlap between the torts of assault and battery and submits that it is trite law that constitutional claims should be a remedy of last resort. Further she submits that the proviso precludes the Supreme Court from exercising its powers under the Constitution for breaches of fundamental rights, not in spite of, but rather because of adequate means of redress being available under the law. She refers to paragraph 4 of **Merson v Cartwright** which states "...the Constitution did not provide, nor did it intend to provide for a duplication of damages on the self-same facts both in tort...as well as under the fundamental rights provisions of the Constitution."
31. On the issue as to quantum of damages, Mrs. Thompson Williams submits that the starting point for determining the quantum of damages for tortious claims is found in the case of **Thompson v The Commissioner of Police of the Metropolis (1998)** QB 498. She states that at page 412 their Lordships set out several guidelines for the period of 43 hours and 35 minutes:-

"In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. 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..."

32. She further submits that the principles and calculations set out in **Thompson** above were also used in **Atain Takitota v The Attorney General et. al**, SCCivApp No. 54 of 2004 where at paragraphs 94 to 95 stated:-

"94. In our judgment, if we are right in our conclusion that the whole of the period of the appellant's detention was unlawful, this case would clearly be within the first principle on which aggravated or exemplary damages should be awarded..."

95. If we are right in our conclusions that the whole of the period of the appellant's detention was unlawful and that he was denied the right to have a court of law determine his guilt of the summary offence of illegal landing and as the learned judge himself found, the appellant's constitutional rights under Articles 17(1) and 19(1) were infringed throughout the 8 years and two months that he was detained, a sum in respect of exemplary damages is required. In this case, a figure of \$100,000.00, we think would be sufficient by way of exemplary damages."

33. It is her submission that the Court in **Atain Takitota (supra)** favoured the daily rate of \$250.00 as seen in **Thompson (supra)** and awarded the Plaintiff the sum of \$579,000.00 for 2316 days of unlawful imprisonment. She also refers the Court to the case of **Delano Keaton Smith v the Commissioner of Police and the Attorney General**, PUB/CON/00021 where the Court ordered the sum of \$1,500.00 to the Plaintiff for his wrongful detention of six hours and the sum of \$1,200.00 for legal costs.

34. Further, Mrs. William Thompson submits that the case of **Jamal Cleare v the Attorney General et. al** CLE/gen/FP/0128 of 2007 is applicable to the instant case. In that case she states that Justice Longley awarded the Plaintiff the sum of \$750.00 for his wrongful detention of six days and \$6,000.00 in legal costs. The Plaintiff appealed to the Court of Appeal in respect of his unlawful detention and the Court of Appeal awarded him the sum of \$25,000.00 for seven days of unlawful detention. She highlights then president of the Court of Appeal, Justice Anita Allen's words in the Judgment that *"the damages awarded in Atain Takitota did not intend to lay down a general tariff for unlawful detention of an individual"*.

35. Therefore, she submits that in applying the daily rate of \$3571.42 for wrongful detention used by the Court of Appeal in **Jamal Cleare v The Attorney General et al** SCCivApp No. 110 of 2011 to the instant case, the Plaintiff was detained for approximately four and a half hours at Central Police Station therefore, the sum of \$2,000.00 is reasonable for

the Plaintiff's unlawful detention. She also submits that under the tort of assault by the 3rd Defendant the sum of \$2,000.00 is reasonable for the Plaintiff's claim for assault and battery. In support of this submission she refers to Justice Charles' commentary at paragraph 89 in **Douglas Ngumi v The Attorney General et. al**, 2017/CLE/gen/01167 where she stated "...I still consider the daily rate of \$250.00 to be fair and reasonable considering the socio-economic conditions in The Bahamas. I also took into account the aggravation suffered by Mr. Ngumi which was nothing short of cruel and inhumane. Therefore, for 2,316 days at \$250.00 daily is equivalent to \$579,000.00." The sum was reduced to \$386,000.00 by the judge for the torts of false imprisonment, assault and battery. Lastly, she submits that in respect of the claim for unlawful arrest, the sum of \$2,000.00 is adequate and reasonable. It is her submission that applying the cases to the findings made by the Court in its Judgment the reasonable award to be made to the Plaintiff is (i) for assault and battery the sum of \$2,000.00; (ii) for false imprisonment the sum of \$2,000.00; and (iii) for unlawful arrest the sum of \$2,000.00 for a total sum of \$6,000.00.

Analysis

36. Counsel for the Defendants has provided numerous authorities on the determination of quantum of damages and the Courts calculation of the same.

Assault

37. The Court after hearing the evidence and reviewing the authorities advanced by the parties made a finding at paragraph 72 that the 3rd Defendant assaulted the Plaintiff and the subsequent arrest and imprisonment was unlawful.
38. Mr. Tynes, QC has submitted that because of the greater measure of violence meted out to the Plaintiff in comparison to the Plaintiff in **Tynes v Barr**, the sum under the head of damage for Assault should be increased from \$58,750.00 to \$75,000.00. However, the findings of fact by the Court in **Tynes v Barr** show that the Plaintiff in that case was subjected to far more violence than the Plaintiff in the instant case. Moreover, no other authority as to the calculation for an award under this head of damages has been provided to the Court to support the Plaintiff's submission as to the sum that should be awarded.
39. Mrs. Thompson-Williams has relied on the case of **Britney Neymour and Lillyetha Miller v The Attorney General of the Bahamas et. al** in support of the Defendants submission that the sum of \$2,000.00 is a reasonable amount for the Plaintiff's claim for

assault. In that case Justice Winder made a global award inclusive of the claims for arbitrary arrest, assault and battery and false imprisonment in the sum of \$40,000.00 for the First Plaintiff and made an award of \$2,000.00 for the assault and battery relative to the Second Defendant. The Plaintiffs in that case claimed damages for the assault and battery arising from the arrest of the First Plaintiff at her home in Pinewood Gardens in the presence of the Second Plaintiff. Justice Winder in his Judgment accepted the Plaintiffs evidence as truthful and at paragraphs 17 to 21 made the following findings:-

"17 The plaintiffs submit that they have suffered both physically and mentally as a result of the actions of the police officers surrounding the incident in question. The night-time entry of the six police officers, dressed in dark clothing, shouting the name of the teenage female occupant and then forcibly entering the residence, without warning, leaves me with little doubt that the occupants of the home would have been frightened or apprehended the infliction of physical harm. I accepted the plaintiffs' claim that they were not shown a warrant by police officers when they came to the Pinewood Gardens home. I also accepted the plaintiffs' complaint that they were verbally assaulted by police officers when they dared to ask why Britney was being arrested. Finally, I accepted that Britney was "shoved" into the back of the police van at the time of her arrest as she alleged. This, in my view amounts to assault and battery as claimed.

18 Regarding the claims of inhuman and/or degrading treatment, contrary to the constitutional protections, the plaintiffs have spoken of the fear and embarrassment that they felt by the way officers entered their home and the manner in which Britney was taken from the home. The evidence was that she was handcuffed, with neighbours looking on while barefoot and in her nightgown. She was then transported to and paraded through the police station in her nightgown and barefoot. While there she claims to have been taunted by the officers, who she claims made statements like "you and your mother are criminals" and "you should have been raped". Britney says, and I accept, that during the detention at the police station she soiled herself after she experienced her period; however she was not allowed to manage her menstrual hygiene with dignity because she was not allowed to clean herself up.

19 Having seen and heard the evidence I accepted Britney's account of her experience while at the police station and find that the behaviour displayed by the officers and the treatment she described was wholly unacceptable for law enforcement officers, who are agents of the state. I also accepted Britney's evidence regarding the unsanitary conditions of the cells in which she was detained. No medical evidence was presented, however, in relation to her claim that the rash that she contracted following the incident, was a direct result of the conditions she endured during her time in custody.

20 With respect to the claim relative to the mental impact of the incident on the plaintiffs, I accepted the evidence of Dr Christie that psychiatric evaluations are not limited to a specific period in time. I did not find that the arrest and detention of Britney, in all of the circumstances, was solely responsible for the diagnoses made by Dr Christie. However, I do believe that the manner in which the arrest was effected did cause a measure of mental distress to both plaintiffs and that the defendants should be held accountable for the impact of their actions.

21 The entry into the private home of a citizen and the arrest and detention of any of its occupants by members of the security forces, should be carried out appropriately with respect for the human dignity of the individual and in accordance with their Constitutional rights. The manner in which the officers entered the Pinewood Gardens home, depriving Britney of her liberty, had a debasing element which in my view exacerbated the personal and social humiliation that came along with the arrest. The same can be said of Britney's detention."

40. Each case is determined on its own set of facts. In the instant case, the Court made a finding that the 3rd Defendant's action of grabbing the Plaintiff's by his left forearm (above the elbow) and pulling him from his seated position towards the door, was with the intention of ejecting him from the room, not to arrest him; the 3rd Defendant did not let go of the Plaintiff's left forearm and that the Plaintiff demanded that the 3rd Defendant let him go; that the 3rd Defendant's pulling of the Plaintiff from the cubicle to the corridor took about three minutes and that during that time the 3rd Defendant continued to hold on to the Plaintiff; that the 3rd Defendant told the Plaintiff on several occasions during

the aforementioned exchange that it was time to leave, again, clearly his intention was to eject the Plaintiff from the room, not to arrest him; the 3rd Defendant then grabbed the Plaintiff by his left arm with his right hand and proceeded to maul his face with his left hand, whilst simultaneously forcing him up against the wall of the passageway; the Plaintiff attempted to pull his left forearm away from the 3rd Defendant as they were in the corridor when the 3rd Defendant grabbed it and that the 3rd Defendant requested the help of PC 3192 Thomas and that the 3rd Defendant and PC 3192 Thomas attempted to place handcuffs on the Plaintiff while in the corridor. The Court also found that it was the 3rd Defendant who made the first physical contact with the Plaintiff. This action was the assault. As hereinbefore-mentioned in paragraph 21 above the nature of the treatment in **Tynes v Barr** and in the instant case are in my view in stark contrast. Bearing in mind that in the case of **Britney Neymour (supra)** the sum of \$2,000.00 was awarded to the Second Plaintiff by the Learned Judge for the verbal assault, I am of the view that the actual physical assault in the instant case warrants a greater award.

41. Therefore, the Court finds the amount of \$10,000.00 under the head of assault and battery as a reasonable sum and awards the same.

False Imprisonment

42. An unlawful arrest is a false imprisonment and false imprisonment and unlawful detention are both the deprivation of one's liberty for a time, however, short, without lawful cause, for which the plaintiff is entitled to be compensated in damages. The learned authors of McGregor on Damages at para 37-011:

"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 loss of social status and injury to reputation. This will all be included in the general damages which are usually awarded in these cases; generally no breakdown appeared in the cases."

43. In respect of the award of damages for false imprisonment, the Court of Appeal provides a useful discussion in the case of **Jamal Cleare v Attorney General and others (supra)**. At paragraphs 47-49 the Court stated:

"47. The measure of and quantum of damages for unlawful detention would, of course, depend on the nature and circumstances of each case. There can hardly be one size fits all formula for the breach of such an important constitutional right as the right to personal freedom.

48. Needless to say, in our view, it would be most invidious to put a price tag or tariff on the deprivation of personal liberty. But it is undoubted that the right to personal liberty is, next to the right to life, an elemental right on which the enjoyment of most, if not all, of the other rights guaranteed in the Constitution is dependent. Personal liberty truly is priceless.

49. It is for these reasons that we are unable to support the quantum of damages of seven hundred and fifty dollars (\$750.00) awarded by the learned judge; nor for that matter do we think the measure of damages of two hundred and fifty dollars (\$250) per day, used to arrive at that quantum, is justified or appropriate. As we have stated, we are convinced and satisfied that Takitota did not intend to lay down a general tariff for the unlawful detention of an individual."

44. In that case Cleare was awarded the sum of \$25,000.00 following a detention of 3 days. Following **Jamal Cleare (supra)**, Charles J made an award of \$386,000.00 in the case of **Douglas Ngumi v AG et al**, Ngumi had been detained for 2,316 days. In this case the Plaintiff was detained for six hours.

45. The injury of such detainment as stated above is generally the loss of time, injury to feelings, injury to reputation. The Plaintiff's evidence and the Court's finding was that he was unceremoniously marched from DEU through the building to the exit downstairs then to the desk of the Custody Suite via the exterior of the building by DC 3192 Thomas and WDC 3167 Burrows. The 3rd Defendant entered the foyer of the Custody Suite from the interior of the building and repeated that he was charged with being disorderly in a police station. He was subsequently placed in a jail cell with other persons and was told that he was charged with the additional charges of assaulting a police officer and resisting arrest. Sometime later he was photographed and fingerprinted. The Plaintiff's evidence and the Court's finding was that he was detained from 4:10pm on Monday, November 12, 2012 and released sometime around 10:40pm that same night. It is clear from the evidence of all of the witnesses that the persons witnessing the treatment of the Plaintiff while handcuffed were his client, other officers in the different sections of Police Headquarters

and persons who were also detained in cell block, who would have been members of the general public. The difficulty however, in assessing this head of damages is that no evidence was adduced to show the loss to his business during the time he was detained, although as an Attorney one's work is continuous. Further, no evidence was led as to whether the general public witnessed his exit from the building in handcuffs, whether the persons who were in the jail cell with him would have thought less of him, the effect of the arrest and detainment on his mental health or how it affected his general practice.

46. Bearing in mind the statement from then Court of Appeal President Anita Allen in **Jamal Cleare (CA)** in paragraph 34 above and that the Plaintiff was and is a Senior Attorney at the Bar and in the community I am of the view, that in all of the circumstances of the case a reasonable award under the head of false imprisonment is \$40,000.00.

Disposition

47. Therefore the Court awards the Plaintiff the sum of \$10,000.00 under the head of damages for assault and the sum of \$40,000.00 under the head of damages for the false imprisonment with a total sum of damages in the amount of \$50,000.00.
48. As costs usually follow the event I see no reason to depart from this, costs are to be awarded to the Plaintiff to be taxed if not agreed.

Interest

49. The Court provided its Judgment on the Assessment of Damages on April 11, 2022 however, inadvertently, consideration was not given to the issue of interest. As the written Judgment on Assessment of Damages has not yet been circulated and the Order on Judgment on Assessment has not yet been perfected, I now make a determination on the issue of Interest.
50. Counsel for the Plaintiff, Mrs. Tanisha Tynes-Cambridge submits that the interest be payable on the award of damages to the Plaintiff at the statutory rate from the date of the incident on November 12, 2012.
51. Counsel for the Defendants, Mrs. Sophia Thompson-Williams contends that the statutory rate of interest starts from the perfected Judgment in this matter and that the rate of 3% is awarded from the date of the filing of the Writ of Summons to the delivery of the Ruling on the April 11, 2022.
52. The Court is guided by similar decisions as referred to by Counsel in their submissions. In **Britney v Neymour** (supra) Justice Ian Winder awarded interest at the rate of at 3%

from the dated of the filing of the Writ of Summons to the date of judgment and to accrue thereafter pursuant to the Civil Procedure (Award of Interest) Act. The same was awarded by Justice Winder in **Martin Orr v The Attorney General et. al** 2017/CLE/gen/00983 (not referred to by any party in their submissions) and a similar rate of 4% per annum from the date of the filing of the Writ of Summons, July 12, 2011, until the date of judgment on the assessment, and thereafter with interest pursuant to the Civil Procedure (Award of Interest) Act until payment by now retired Justice Estelle Gray Evans in **Robert Kane v The Attorney General et. al** 2011/CLE/gen/FP/00170.

53. Having considered the submissions and the said authorities, interest is hereby awarded at 4% per annum from the date of filing of the Writ of Summons until the date of the pronouncement of the judgment on the assessment, April 11, 2022, and thereafter with interest pursuant to the Civil Procedure (Award of Interest) Act until payment.

Dated this 13th day of April, A.D. 2022


Petra M. Hanna-Adderley
Justice