

COMMONWEALTH OF THE BAHAMAS

**IN THE SUPREME COURT
Common Law and Equity Division
2019/CLE/gen/01536**

BETWEEN:

TYREESE JORDAN MARTIN

Plaintiff

AND

COMMISSIONER OF POLICE

1st Defendant

AND

THE ATTORNEY GENERAL

2nd Defendant

AND

CONSTABLE 1587 DEVEAUX

3rd Defendant

Before: Deputy Registrar Mr. Renaldo Toote

Appearances: K. Melvin for the Plaintiff
Kenria Smith for Defendant.

Hearing Date: 13th July, 2021.

Unlawful arrest & detention – claim not specifically pleaded– false imprisonment – interest not specifically pleaded.

1. This is the assessment of damages in respect of the plaintiff's claim made in the writ of summons filed 1 November, 2019.
2. The statement of claim indorsed in the writ avers that police officers unlawfully arrested and detained the plaintiff and subjected him to inhuman and degrading treatment.
3. The facts and circumstances of this case are identical to that of **Michael Rudolph Martin v Commissioner of Police et al** (Supreme Court Action 2019/CLE/gen/01530) where

Deputy Registrar Misiewicz assessed damages on 31 August, 2021. In fact, the plaintiff and Michael Rudolph Martin were arrested as being concerned together in the same incident.

4. In analysing her [Misiewicz] assessment, I will adopt and appropriately apply similar reasoning where necessary.

Background Facts

5. At the time of the incident, the plaintiff was 19 years old when Police Officers arrived at his home sometime around 8 am. According to the plaintiff's affidavit filed 5 February, 2021, Police Officers instructed him to put on long pants and tennis shoes to accompany them to the police station. When asked whether or not he was under arrest, the plaintiff was told it was only necessary to sort something out.
6. The plaintiff was escorted to the Carmichael Road Police station and immediately upon arrival, informed that he was under arrest for murder. At no time during his incarceration did the Police inform the plaintiff as to who he allegedly murdered despite his insistence. The Plaintiff, was later photographed and placed in a cell where he was forced to urinate in empty plastic bottles.
7. The evidence of the plaintiff is that he was unlawfully held in custody for 58 hours and never interviewed reference to the allegation of murder.
8. The plaintiff was subsequently released from custody without ever being charged for any offence. During the assessment, the plaintiff's evidence went unchallenged by the defendant; therefore the facts are accepted as uncontroverted.

The Pleadings

9. The plaintiff's specially endorsed writ of summons was filed on 1 November, 2019.
10. On 12 November, 2019, the defendants entered into an appearance. No defence was entered, however on 6th December, 2019 the defendants filed a summons and affidavit in support seeking leave for an extension of time to file its defence. This application was never heard.
11. On 3 June 2020, the plaintiff filed a summons with supporting affidavit seeking leave to enter judgment in default of defence against the defendants which was heard and leave granted by Charles, J. on 5 November, 2020 for damages to be assessed.

Assessment

12. Similar to Michael Rudolph Martin case, paragraph 4 of the statement of claim is the only place in the pleading where the cause of action is mentioned. More importantly, the prayer

at the end simply asks for “damages to be assessed”. There is no prayer for constitutional damages yet the plaintiff’s submissions make reference to a constitutional claim.

13. It is a general rule that a constitutional claim must be specifically pleaded and proven. It is not merely sufficient to say the police did this and expect to sustain a claim averring breach of a constitutional right without more. I am of the opinion that this court is restrained from assessing such claim as it is settled law that a party is bound by its pleadings [see **McIntosh v Family Guardian Insurance Company Limited** SCCivApp No. 64 of 2019]. Therefore, any constitutional claim cannot form part of this assessment.
14. When assessing damages, **Lord Scott of Foscote** in **Merson v Cartwright and another** [2005] UKPC 38 at para 15 indicated that it would be preferable in assessing damages for awards to be made under each head claimed. However as aforementioned, I am unable to do so, because the plaintiff did not traditionally plead his damages.
15. Nevertheless, the plaintiff is seeking damages for being unlawfully arrested and detained for 58 hours and cited with authority the following cases:
16. **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 and 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.
17. In opposition, the Defendants cited with authority the decisions of **Mackey v Thompson** [1994] BHS J. No. 128; **Merson v Cartwright** [2005] UKPC 38; and **Paul Thompson v Colin Anthony Thompson and Commissioner of Police** BHS J. No.1077 of 1997.
18. Notwithstanding the aforementioned cases, I find the decision of **Antoine Justin Russell v Attorney General et al** SCCivApp No. 186 of 2017 to be appropriately applicable to the facts of this matter.
19. Being efficacious, I will adopt Deputy Registrar Misiewicz’s summary of facts of **Russell** which was outlined in her ruling of Michael Rudolph Martin.
20. In **Russell**, 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 not 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."

21. 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."

22. I concur, the circumstances in this matter are not as egregious when compared to the facts of Collie, Lloyd or Merson but similar to that of Russell and Paul Thompson. As previously mentioned, the plaintiff did not plead any constitutional claims nor exemplary or vindictory damages, therefore I will not address those claims.
23. In keeping with the concept of developing a standard judicial compensation guideline, I will maintain the measure of award as laid down in Russell and Michael Rudolph Martin. In Russell the Court of appeal awarded the sum of \$10,000.00 for 31 hours of unlawful detention; whereas the Deputy Registrar awarded the sum of \$20,000.00 to the Plaintiff who was unlawfully detained for 62 ½ hours. In light of the circumstances, I consider the sum of **\$18,000.00** as an appropriate general damage award for the Plaintiff's unlawful arrest and detention, having regard to the fact that there were no aggravating features associated with his arrest.

Cost

24. I instructed both Counsel to provide submissions as to cost for fixed determination. There was no substantive trial in this matter and the Defendants declined to call any witnesses. Taking into consideration disbursements, the time spent and research involved in this matter, I will fix legal cost to the Plaintiff in the amount of **\$15,000.00**.

Conclusion

25. For the reasons hereinbefore set out, the assessment is as follows:

1. General damages:	\$18,000.00
2. <u>Legal Costs:</u>	<u>\$15,000.00</u>
Total Damages	<u>\$33,000.00</u>

Interest

26. The Plaintiff's writ of summons prays for interest to be assessed pursuant to the Civil Procedure (Award of Interest) Act. I will state for the record that this court is entitled in the exercise of its discretion to apply an award of interest if it deems that it is necessary to do so.

27. *Inasmuch* as it is relevant, section 3(1) of the Act states:

(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.

28. I observed that Deputy Registrar Misiewicz did not exercise her discretion to award interest on the judgment sum in Michael Rudolph Martin.

29. It is important to note that a claim for interest does not have to be specifically pleaded. The requirement to specifically plead a cause of action is analogous to the fundamental principle that any pleading should give fair notice to the opposite party of the nature of the claim being made against him, with the relevant facts relied upon, so as to enable a defendant to address such claim and to prevent surprise at the trial. See the **Privy Council** decision of **Carlton Greer v Alstons Engineering Sales & Services Ltd.** [2003] UKPC 46 which referenced with approval **Hassanali J** in **De Souza v Trinidad Transport Enterprises Ltd and Nanan** (No 2) (1971) 18 WIR 150, who opined at p 152A -

"A claim for interest need not be pleaded. The discretionary power of the court under the provisions of s. 26 of the Supreme Court of Judicature Act 1962 is exercisable whether or not there is a claim for interest in the pleadings (Riches v Westminster Bank Ltd [1943] 2 All ER 725). Further, as Lord Denning, MR said in Jefford v Gee ([1970] 1 All ER at p 1211):

'A claim for interest is not itself a cause of action. It is no part of the debt or damages claimed, but something apart on its own. It is more like an award of costs than anything else. It is an added benefit awarded to a plaintiff when he wins a case...'

30. In light of the foregoing I will award the Plaintiff interest on the judgment at 3% from the date of the filing of the Writ until judgment and the statutory rate of 6.25% from the date of judgment until payment.

Dated 5th August, A.D. 2022

**Renaldo Toote
Deputy Registrar**