

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

2019/CLE/gen/00522

BETWEEN

LYNDEN SAUNDERS

Plaintiff

-AND-

JERON THOMPSON, Sr.

First Defendant

-AND-

JAMEKCO THOMPSON

Second Defendant

-AND-

**THE ATTORNEY GENERAL OF THE
COMMONWEALTH OF THE BAHAMAS**

Third Defendant

Before: The Honourable Madam Senior Justice Indra H. Charles

Appearances: Mr. Raphael Moxey of Mackay & Moxey for the Plaintiff
Mr. Rashied Edgecombe of the Attorney General Chambers for the Defendants

Hearing Dates: 19 May 2022, 14 September 2022, 28 September 2022

Civil – Unlawful arrest – Reasonable suspicion – Power to arrest without warrant - Assault and battery – False Imprisonment – Breach of constitutional right - Malicious prosecution –Injury to reputation – Damages – Compensatory - Aggravated – Exemplary

The Plaintiff commenced this action against the Defendant police officers and the Attorney General after an incident in which he alleged that the officers used excessive force in arresting him. He contended that his arrest and detention were unlawful, as none

of the offences for which they claim he was arrested were arrestable offences. The Plaintiff also alleged assault and battery for the incident. He further pleaded infringement of his right not to be arbitrarily arrested and detained pursuant to Article 19 of the Constitution. He alleged malicious prosecution for charges of which he was acquitted in the Magistrate's Court and damages to reputation caused by a video recording of a portion of the incident, which was circulated on the internet.

The Plaintiff claims special damages in the amount of \$11,120.00, aggravated damages, exemplary damages, damages for breaches of his constitutional rights under Article 19, damages for assault, battery and false imprisonment and damages for malicious prosecution.

The Defendants denied liability for all of the causes of action averred by the Plaintiff. They asserted that the constitutional redress is an abuse of the Court's process and a violation of the Article 28(2) proviso, as other means of redress were available. They further contended that the officers acted reasonably by stopping the Plaintiff because he committed a traffic offence and that the force used was necessary because the Plaintiff was uncooperative.

HELD: finding that the Plaintiff was assaulted, battered and unlawfully imprisoned and therefore his constitutional right under Article 19 was breached, but finding that he was not maliciously prosecuted and is not entitled to damages for injury to reputation, the Plaintiff is entitled to special damages in the amount of \$8,000.00, compensatory damages for assault, battery and false imprisonment in the amount of \$80,000.00, damages for breach of his constitutional right of \$15,000.00, interest at the statutory rate of 6.25% from the date of the filing of the Writ of Summons to the date of payment and costs agreed in the amount of \$35,000.

1. Section 11 of the Criminal Procedure Code Act confers upon police officers the authority to use all means necessary to effect an arrest where the subject forcibly resists the endeavour to arrest him. That provision, however, is subject to a proviso that it does not give the police officer the right to justify the use of force greater than that which is reasonable in the circumstances to apprehend the offender.
2. In determining whether the police officers possessed the authority to arrest and detain the Plaintiff, the question is whether the offence was an arrestable offence
3. By virtue of the Plaintiff's imprisonment being unlawful, his constitutional right not to be arbitrarily arrested and detained was infringed.
4. An award for breach of constitutional damages and exemplary damages is duplicitous: **Ousman Bojang v The Hon. Carl Bethel (In his capacity as Attorney General), The Hon. Brent Symonette (in his capacity as Minister of Immigration), William Pratt (In his capacity as Director of Immigration) and Peter Joseph (In his capacity as Officer in Charge of Carmichael Detention Centre) 2017/CLE/gen/01166 and Takitota v Attorney General & Ors [2009] UKPC 11 applied.**

5. As aggravating factors such as the injury to feelings, humiliation, pain and inconvenience of the incident have been accounted for in the compensatory award, an award for aggravated damages would be duplicitous: **Ousman Bojang v The Hon. Carl Bethel (In his capacity as Attorney General), The Hon. Brent Symonette (in his capacity as Minister of Immigration), William Pratt (In his capacity as Director of Immigration) and Peter Joseph (In his capacity as Officer in Charge of Carmichael Detention Centre)** 2017/CLE/gen/01166 applied.
6. It does not follow from Mr. Saunders acquittal of the charges that the prosecution was malicious. It is merely a starting point for proving malicious prosecution. The criminal standard of proof to be discharged by the prosecution in a criminal trial is a high one (beyond reasonable doubt). As such, the failure to discharge this high burden is not probative to showing malicious intention or an absence of reasonable or probable cause for such proceedings. Further, the evidence of the officers was supportive of the charges, as their evidence before and during that trial was that Mr. Saunders assaulted the officers and resisted arrest: **Rod Andrew v The Commissioner of Police** 2017/CLE/gen/00825 applied; **Trevor Williamson v The Attorney General of Trinidad and Tobago** [2014] UKPC 29 applied.
7. Injury to reputation is not, itself, a cause of action. It is a head of damages that is common to a defamation cause of action.

JUDGMENT

Charles Snr. J:

Introduction

[1] One bright Monday morning in September 2018, a young man was riding his motorcycle in a westward direction on Prince Charles Drive near Beatrice Avenue when he encountered a traffic accident. He was heading to his workplace. In order to bypass the traffic accident which was blocking the westbound lanes, he decided to ride along a portion of the sidewalk. In doing so, he was stopped by the Second Defendant (“Corporal Thompson”) and asked to dismount his motorcycle. He may not have followed the instructions given by Corporal Thompson. To be succinct, a physical altercation ensued and the young man (“Mr. Saunders”) was injured.

[2] He now sues the Defendants claiming damages for assault and battery, false imprisonment, malicious prosecution, special damages in the sum of \$11,120, aggravated damages, exemplary damages, damages for breach of his constitutional rights under Article 19(1) and 19(2) of the Constitution, damages for

injuries suffered as a result of publication of his image on the World Wide Web, compensation under Article 19(4), interest and costs.

- [3] The Defendants denied liability for all of the causes of action averred by Mr. Saunders. They asserted that the constitutional redress is an abuse of the Court's process and a violation of the Article 28(2) proviso, as other means of redress were available. They further contended that the officers acted reasonably and justifiably by stopping Mr. Saunders because he committed a traffic offence and that the force used was necessary because Mr. Saunders was uncooperative and belligerent.
- [4] With respect to the alleged damage to reputation, the Defendants contended that the video recording was not contemptuous, but was instead made in an effort to cover the officers from liability by showing Mr. Saunders's uncooperative and volatile behaviour. Further, they stated that the video could not be defamatory, as its publication was never intended and there was no malice.

Background facts

- [5] On 17 September 2018, at about 7:45 a.m., the First Defendant (Inspector Thompson") and Corporal Thompson were investigating a traffic accident on Prince Charles Drive near Beatrice Avenue. As they were investigating the accident, Corporal Thompson observed Mr. Saunders riding his motorcycle on the sidewalk. As a result, Mr. Saunders was beckoned to stop and dismount the motorcycle.
- [6] Apparently Mr. Saunders was not following instructions so the officers removed him from the motorcycle.
- [7] After a physical altercation between the officers and Mr. Saunders (their respective accounts are strikingly divergent), the officers arrested Mr. Saunders and took him into police custody.

- [8] Inspector Thompson instructed Corporal Thompson to record a portion of the physical struggle for future reference and in order to protect themselves. The video did not capture the entire incident.
- [9] Mr. Saunders stood trial in the Magistrate's Court for the following charges: two (2) counts of assaulting a police officer and one (1) count of resisting arrest. He was acquitted of all charges.

The evidence

- [10] Mr. Saunders was the sole witness to testify on his behalf. Inspector Thompson, Corporal Thompson and Corporal Brian Roache gave evidence on behalf of the Defendants. The video recording of the incident along with its transcript and the transcript of the criminal trial in the Magistrate's Court were also part of the evidence.

Lynden Saunders

- [11] Mr. Saunders' evidence in chief is contained in a Witness Statement filed on 5 August 2021. He testified that he was riding his motorcycle along the pavement but dismounted it as soon as he was told to do so by the police officers. Inspector Thompson approached him and kicked his motorcycle to the ground.
- [12] Mr. Saunders said that when the officers asked for his driver's licence, he said that he did not have one. They told him that they would hold his motorcycle at the police station and that he would have to walk or catch the bus to work. He said that he was not aware that he was under arrest and, as he began to walk away, Inspector Thompson shouted to him that he could not leave so he returned to where his motorcycle was. Inspector Thompson then came up to his face in an aggressive manner and held his hand in a position as if he was about to hit him. Mr. Saunders stated that he said "*You cannot hit me because I have not done anything for you to hit me and I did not touch you and I know my rights.*" He said that he also told Inspector Thompson that he preferred to deal with Corporal Thompson because he (Inspector Thompson) was too aggressive. Inspector Thompson, while raising

his hand higher, said “*say another word, say another word*”. Inspector Thompson then punched him in the face and he raised his hand to block the strike. Corporal Thompson hit him in the back of his head with his fist. Inspector Thompson then picked him up off of his feet and literally body slammed him to the ground with his face hitting the ground first. He alleged that, as a result of being body slammed to the ground, his mouth and teeth were injured and his nose was bleeding. There were other minor scratches on his face.

[13] He further stated that while he was on the ground on his stomach, his hands were cuffed behind his back with one officer kneeling in his back and the other officer using his two hands to pin his legs to the ground. The officers then turned him onto his back and Inspector Thompson knelt down with his knee onto his neck and throat area and forcefully pressed down. He said that he complained that he could not breathe, he was in pain and his mouth and wrist were bleeding.

[14] Mr. Saunders asserted that Inspector Thompson started using obscene language toward him, telling him to “*shut his fucking mouth*”, so he used obscene language in response and begged him to ease the pressure from his knee. He said Inspector Thompson said “*yeah your fucking neck gonna be bleeding soon*” when he complained of being in pain.

[15] Under cross-examination, Mr. Saunders admitted that, at the time of the incident, he was not wearing a helmet and the motorcycle was neither licensed nor insured. He also admitted that it was reasonable for him to have been pulled over for riding his motorcycle on the sidewalk.

[16] Mr. Saunders maintained that one of the officers pulled a service gun on him. He denied refusing to dismount the motorcycle when he was stopped. He said that he came off the motorcycle immediately after stopping. He denied that, by telling the police that they could not hit him because he had not done anything to warrant it, he was being uncooperative. He also denied refusing to present his identification and maintained that he told them that he did not have it in his possession. In

response to not having his identification, he denied that the officer did not believe that he gave his true name.

[17] Mr. Saunders denied that it was not until he struck Corporal Thompson to his throat that the officers physically restrained him. He explained that it is unlikely that he could reach the officer's throat since he is only a little taller than 5 feet and Corporal Thompson is over 6 feet tall. He denied punching and kicking at the officers even after he was being physically restrained.

[18] Mr. Saunders maintained that the officers used obscenities toward him from the outset when they told him to get off the motorcycle. He said that they did not greet him at all and instead started off by saying "*Come off. Come off the fuckin motorcycle.*" He denied that his belligerence and use of obscenities warranted the force used against him.

[19] After the incident, Mr. Saunders stated that he has seen, on social media, the video recording taken by the officers. He also overheard people talking about the video and, in some cases, he was viewed with mockery and ridicule. The incident was covered in the local newspaper and it was a topic of discussion on radio talk shows.

Inspector Jeron Thompson

[20] Inspector Thompson filed a Witness Statement on 1 February 2022 which stood as his evidence in chief at trial. At the time of the incident, he was a Sergeant or Police. He is now an Inspector of Police.

[21] Under cross-examination, Inspector Thompson said that he is 6 feet 2 inches and weighs 245 lbs. He conceded that riding or parking any vehicle on the sidewalk is a traffic offence but not an arrestable offence. He said that while he was investigating the traffic accident, he overheard Mr. Saunders refusing to dismount the motorcycle when told to do so by Corporal Thompson. He said he then left the traffic accident and assisted Corporal Thompson at which point Mr. Saunders dismounted the motorcycle.

- [22] Inspector Thompson said that he went back to the accident scene. Shortly thereafter, he returned to where Corporal Thompson and Mr. Saunders were and asked Mr. Saunders to move away from the motorcycle. He denied holding his hand in a manner that would cause a reasonable person to believe that he would slap him. He said that he did not recall Mr. Saunders telling him that he could not slap him.
- [23] Inspector Thompson denied lifting Mr. Saunders off the ground or slamming him to the ground face first. Later on, when confronted with his Report which he acknowledged was correct and which he made on 17 September 2018, he said that his Report is correct – “I *took* him to the ground, not *lifted* him”. In the Report, he stated “*In an effort to subdue this individual, I responded by striking him to the face and bringing him to the ground face first.*”
- [24] He agreed that Mr. Saunders stopped riding when he was asked by Corporal Thompson to do so. He maintained that he did not believe Mr. Saunders when he said that he did not travel with any form of identification or that he gave him his true name.
- [25] Inspector Thompson accepted that he put his knee into Mr. Saunders’ neck and shoulder area after he was cuffed with his hands behind his back while he lay on his stomach. He explained that that is what he is trained to do because Mr. Saunders was still being combative. He said that it took three officers to subdue him. He stated that Mr. Saunders turned himself onto his back and he heard him complaining about his position. He said he could not recall hearing Mr. Saunders complain about being unable to breathe or that his vein was cut or that he punched him in his mouth and his teeth were out. He said that he may have said “*Yeah your fucking neck will be bleeding soon.*”
- [26] Under re-examination by Mr. Edgecombe, Inspector Thompson explained that he uttered those words because if Mr. Saunders kept moving, he risked injuries to his neck because that was where his knee was positioned.

- [27] He acknowledged that the incident started a while before Corporal Thompson began recording it on his personal phone. He admitted that he instructed Corporal Thompson to record the video.
- [28] During re-examination by Mr. Edgecombe, Inspector Thompson was asked why he ordered the recording of the video. He stated that the reason was to show Mr. Saunders' behaviour – how bad he was carrying on with them. He said that Corporal Thompson sent the video to him and he sent it to his Commanding Officer, ACP Craig Stubbs. He said that when he forwarded it to ACP Stubbs, he may have accidentally forwarded it to the *Whatsapp* groups for the station's division.
- [29] Inspector Thompson denied showing the video to officers in the Elizabeth Estates Police Station or that the officers laughed and expressed that that is how they should be treated.

Corporal Jamecko Thompson

- [30] Corporal Thompson filed a Witness Statement on 1 February 2022 which stood as his evidence in chief at trial. He stated that although he was a Constable at the time of the incident, he is now a Corporal of Police.
- [31] Under cross-examination, he stated that he is 5 feet 9 inches tall and weighs 170 lbs. He denied drawing his service weapon towards Mr. Saunders. He said that Mr. Saunders dismounted the motorcycle after being told several times to do so.
- [32] Corporal Thompson's evidence with respect to the ID was consistent with that of Inspector Thompson.
- [33] He denied that Inspector Thompson raised his hand in a manner that appeared that he would strike Mr. Saunders. According to him, he did not see Inspector Thompson strike Mr. Saunders in the face or slam his face to the ground at any time. He said "*Okay. He did not slam his face physically. However, his whole body*

went to the ground, which in, he took him down. Not by face – face first how you explaining it, sir.”

[34] He said that after Mr. Saunders was cuffed on the ground, he placed his weight on him because he was still trying to resist arrest. He also accepted that Inspector Thompson’s knee was in the neck area of Mr. Saunders.

[35] Corporal Thompson stated that he used his personal cell phone to record the video. He denied intentionally omitting from his report that he had video evidence of what occurred. He also denied deliberately not sharing the video with the prosecutor who was laying the charges.

Corporal Brian Roache

[36] Corporal Brian Roache testified that he was involved in the traffic accident which occurred on 17 September 2018. He witnessed the incident. According to him, when Mr. Saunders rode on the sidewalk, the officers immediately beckoned to him to stop and dismount his motorcycle. Although Mr. Saunders stopped, he refused to dismount. After consistent refusal to dismount, the officers physically removed Mr. Saunders from the motorcycle. Under cross-examination, Corporal Roache maintained that Mr. Saunders did not dismount the motorcycle initially. Once Mr. Saunders was removed from the motorcycle, he returned to his vehicle and sat inside with the door open.

[37] Corporal Roache testified that he heard voices being raised coming from the direction of the incident. He observed Mr. Saunders with his hands around the throat of Inspector Thompson and was pushing him backwards. Being concerned for Inspector Thompson’s safety, he ran to his assistance. Once he got there, Mr. Saunders was already taken down but was still struggling violently with the officers. He said that he could not say whether he was taken to the ground face first, as he had only seen him on the ground.

[38] According to Corporal Roache, he assisted the officers to subdue Mr. Saunders so that he could be cuffed to restrain him and stop his violent behaviour. He assisted by holding his feet because he was trying to use them to kick the officers away. Once he was satisfied that the officers had the situation under control, he left the scene. He said that Mr. Saunders was still behaving belligerently.

[39] Under cross-examination, Corporal Roache stated that he did not see Inspector Thompson strike Mr. Saunders to the face. He heard Mr. Saunders use obscenities but not the officers.

The Issues

[40] The issues to be determined are:

1. Whether the force used by the officers against Mr. Saunders was justified?
2. Whether Mr. Saunders' arrest and detention were lawful?
3. Whether the prosecution of the charges in the Magistrate's Court constituted malicious prosecution?
4. Whether the Defendants are liable for damage to Mr. Saunders' reputation?
and,
5. Whether Mr. Saunders is entitled to damages and if so, what is the measure of damages?

Assessing the evidence/factual findings

[41] Credibility of the witnesses is central to this action.

[42] I believe that Mr. Saunders initially resisted dismounting the motorcycle when he was asked to do so but I believe that the officers used obscenities in asking him to do so, which in my considered opinion, is relevant in determining the issue of the force used by the officers. I also believe that Inspector Thompson held the belief that Mr. Saunders lied about his name.

[43] With respect to the physical altercation, I prefer the evidence of Mr. Saunders to that of the officers. Although, as I stated, I believe that Mr. Saunders was initially resistant to the directions of the officers, having considered all of the evidence, I

do not believe that the force used by the officers was commensurate with the circumstances. The officers used more force than was reasonable necessary.

[44] Mr. Moxey, appearing as Counsel for Mr. Saunders, highlighted inconsistencies in the Defendants' evidence as it relates to Mr. Saunders being handcuffed. The evidence of the officers in the Magistrates Court was that he was never handcuffed while the evidence in this Court was that he was once he was brought to the ground.

[45] In the portion of the video recording presented to the Court, Mr. Saunders was laying on his back with his hands cuffed and the knee of Inspector Thompson was on Mr. Saunders' chest/neck area. Mr. Saunders was using obscenities and, at the same time, begging for help. He was saying that he could not breathe and *"all my vein cut bro...boy, my fucking hand bleeding bro; My vein bleeding, teeth bleeding, they punch my teeth out of my mouth...I need help bro, boy fuck dawg, boy, my hand bleeding bro."* The video ended with Inspector Thompson saying *"Yeah, your fucking neck gonna be bleeding soon!"*

[46] I do not believe the evidence of the Defendants or Corporal Roache that Mr. Saunders had his hands around the throat of Inspector Thompson and pushed him backwards requiring Inspector Thompson to "bring" him to the ground. The injuries (broken teeth) suffered by Mr. Saunders were more consistent with a person being body slammed to the ground. However, I do believe that Mr. Saunders was not obeying the police instructions when they asked him to step away from the motorcycle.

[47] That said, I still prefer the evidence of Mr. Saunders to that of the Defendants and their witness, Corporal Roache. With respect to Inspector Thompson and Sergeant Thompson, there are many inconsistencies with their evidence in this Court and in the Magistrate Court which were identified by Mr. Moxey during his cross-examination of both officers. With respect to Corporal Thompson's evidence, I took it with a grain of salt. He was involved in the traffic accident which Inspector

Thompson and Sergeant Thompson were investigating. He may have had an axe to grind. Shortly put, having seen him and observing his demeanour in the witness-box, I simply did not believe him.

[48] In my opinion, the officers distorted the true account of what took place on the day in question.

The law

Assault and battery/use of justifiable force and harm

[49] The tort of assault and battery comprise of the act of making contact with the plaintiff. It must be a direct and intentional act. The plaintiff must not have consented to the act. Croom-Johnson LJ in **Wilson v Pringle** [1986] EWCA Civ 6 (26 March 1986) stated at page 4 of the judgment:

“Another ingredient in the tort of trespass to the person is that of hostility. The references to anger sufficing to turn a touch into a battery (*Cole v Turner*) and the lack of an intention to assault which prevents a gesture from being an assault are instances of this. If there is hostile intent, that will by itself be cogent evidence of hostility. But the hostility may be demonstrated in other ways.”

[50] The learned authors of **Halbury's Laws of England 3rd Ed Vol 10** at page 740, define assault and battery as follows:

"An assault is an offer or attempt to apply force or violence to the person of another in an angry or hostile manner; and if force is actually applied, directly or indirectly, either illegally or without consent of the person assaulted, and in an angry, rude, revengeful or violent manner, the assault becomes a battery, however slight the force may be.

The direct application of any physical force to the person of another may amount to a battery ...anything that can be called a blow, whether inflicted with hand, weapon or missile is a battery. See: *Clerk & Lindsell on Torts, 14th edition at page 357.*" [Emphasis added]

[51] Mr. Moxey submitted that the act of drawing a service revolver coupled with the hostile and obscene language used by Corporal Thompson to a young man who was riding his motor cycle on the sidewalk, amounted to an assault. He also submitted that Corporal Thompson had the wherewithal or ability to inflict bodily

injury (the battery) to Mr. Saunders. Corporal Thompson's actions and words put Mr. Saunders in fear for his safety/life and this, by itself, constituted an assault and makes the Defendants liable.

[52] On the other hand, Mr. Edgecombe, who appeared as Counsel for the Defendants, asserted that the officers were defending themselves against Mr. Saunders. He argued that the officers were entitled to use necessary force for the prevention of or in defence of criminal force or harm so long as it does not extend to a wound or grievous harm. In support, he relied on section 107 of the Penal Code, Chapter 84 which provides:

“107. (1) For the prevention of, or for the defence of himself or any other person against, any crime, a person may justify the use of necessary force, not extending to a blow, wound or grievous harm.

(2) For the prevention of, or for the defence of himself or any other person against, any criminal force or harm, a person may justify the use of necessary force, not extending to a wound or grievous harm.

(3) For the prevention of, or for the defence of himself or any other person against, any felony, a person may justify the use of necessary force not extending to dangerous harm.

(4) For the prevention of, or for the defence of himself or any other person against, any of the following crimes, a person may justify any necessary force or harm, extending, in the case of extreme necessity, even to killing, namely —

- (a) treason;**
- (b) piracy;**
- (c) murder;**
- (d) manslaughter, except manslaughter by negligence;**
- (e) robbery;**
- (f) burglary;**
- (g) house-breaking;**
- (h) arson of a dwelling-house or vessel;**
- (i) rape;**
- (j) forcible unnatural crime;**
- (k) dangerous or grievous harm.”**

[53] Not only is Mr. Edgecombe's position that the officers were acting in self defence predicated on the alleged belligerence of Mr. Saunders being included in the list of

offences for which self-defence is permitted by subsection (4) (which it is not), but his argument is also predicated on Mr. Saunders inflicting harm or, at least posing a threat, which is not supported by the evidence. In my judgment, the evidence suggests that the officers were the aggressors on the day in question notwithstanding that Mr. Saunders also used profanities and was initially belligerent, not following instructions and resisting arrest.

[54] Section 11 of the Criminal Procedure Code Act (“the CPC”) confers upon police officers the authority to use all means necessary to effect an arrest where the subject forcibly resists the endeavour to arrest him. That provision, however, is subject to a proviso that it does not give the police officer the right to justify the use of force greater than that which is reasonable in the circumstances to apprehend the offender. It states:

“11. (1) In making an arrest the peace officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If the person to be arrested forcibly resists the endeavour to arrest him or attempts to evade the arrest, the peace officer or other person concerned may use all means necessary to effect the arrest:

Provided that nothing in this section contained shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender. [Emphasis added]

[55] The law is unambiguous: a person only acts in lawful self defence if, in all the circumstances, he believes that it is necessary for him to defend himself and the amount of force which he uses in doing so is reasonable.

[56] In my opinion, the Defendants cannot justify the use of reasonable force to absolve the incident. As Mr. Saunders was already body slammed to the ground with serious injuries and handcuffed to the back, it is difficult to see how it was necessary for him to be held down by three (3) police officers, two (2) of which were undoubtedly of a larger build than him. I do not believe that the force used by

the officers was commensurate with the belligerence of Mr. Saunders. Accordingly, the Defendants could not have been acting in lawful self defence or using necessary force to effect the arrest.

- [57] It follows that Mr. Saunders is entitled to damages for the medical bills for injuries to hand, mouth and loss of teeth in the amount of \$8,000.00, which was supported by an invoice from The Dental Care Center for the Treatment Plan.

Unlawful arrest and false imprisonment

- [58] False imprisonment is defined by *Clerk and Lindsell on Torts*, 17th ed. (1995) pp. 592-593, para 12-17 as “complete deprivation of liberty for any time, however short, without lawful cause.” The work then quotes the “*Termes de la Ley*”: “Imprisonment is no other thing but the restraint of a man’s liberty, whether it be in the open field, or in the stocks, or in the cage in the streets or in a man’s own house, as well as in the common gaols; and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places whither he will without bail or mainprise or otherwise”.
- [59] False imprisonment, as a form of trespass to the person, is actionable *per se*. In **Murray v Ministry of Defence** [1988] 1 W.L.R. 692 at 703-704, H.L. overruling *Herring v Boyle*[1834]1 C.M. & R. 377, Lord Griffiths stated that “**the law attaches supreme importance to the liberty of the individual and if he suffers a wrongful interference with that liberty it should remain actionable even without proof of special damage.**”
- [60] No doubt, an unlawful arrest is a false imprisonment, and if the requirements of the law as to making it clear to the arrested person that he is under lawful restraint, or informing him promptly of the grounds of his arrest, or taking him before the appropriate authorities within a reasonable time are not complied with, an arrest which might otherwise have been justified will be unlawful and ground an action for false imprisonment.

[61] Mr. Moxey submitted that, at the time that Corporal Thompson beckoned Mr. Saunders to stop while riding his motor cycle on the side walk, he [Mr. Saunders] was committing a traffic offence which attracts a penalty of a citation and a fine. It is not an arrestable offence. Mr. Saunders was cited for a traffic violation and paid the fines. Therefore, Mr. Saunders arrest and 30-hour imprisonment which ensued was unlawful.

[62] Mr. Moxey submitted that, in his evidence, Inspector Thompson stated that he made the arrest because he believed that Mr. Saunders gave a false name. Mr. Moxey emphasized that Inspector Thompson was unable to state why he believed Mr. Saunders gave an incorrect name. In an attempt to justify the arrest of Mr. Saunders, Inspector Thompson contended that he relied on section 59 of the Road Traffic Act (“the Act”) which provides:

“59. A police officer in uniform may require the driver of a motor vehicle to produce any driver’s licence or public service vehicle driver’s licence of which he is the holder, and if that driver does not produce such licence to that officer at the time of the requirement or at a police station selected by the driver within forty-eight hours of the time of the requirement, he shall be guilty of an offence and shall be liable on summary conviction therefor to a fine of forty dollars.”

[63] Mr. Moxey argued that sections 60 and 61 of the Act are also important. Section 60 confers power on police officers to arrest without a warrant **if the driver refuses to give his name and address.**

[64] Since the undisputed facts are that Mr. Saunders gave his name when asked, the officer did not have the authority to arrest him. Further, said Mr. Moxey, section 61 of the Act which speaks to drivers giving false names, does not empower the police to effect an arrest without a warrant. Section 61 provides:

61. If the driver of any motor vehicle who commits an offence under this Act, or any regulations made thereunder, refuses to give his name and address or gives a false name or address, he shall be guilty of an offence and shall be liable on summary conviction to a fine not less than five hundred dollars but not exceeding one thousand dollars or to imprisonment for a term of three months, or to both the fine and imprisonment; and it shall be the duty of the owner of the motor

vehicle if required, to give any information which it is within his power to give and which may lead to the identification and apprehension of the driver; and if the owner fails to do so he shall be guilty of an offence and shall be liable on summary conviction to a fine of two hundred dollars or to imprisonment for a term of one month or to both the fine and imprisonment.” [Emphasis added]

[65] Mr. Edgecombe submitted that the officers effected the arrest in accordance with section 11 of the CPC. However, that section is not relevant to determining whether the officers had lawful basis for arresting and detaining Mr. Saunders, as it only speaks to how arrests ought to be effected.

[66] He further submitted that the rule in **Walters v WH Smith and Son Ltd** [1914] 1 KB 595 is that a police officer or private citizen may arrest without a warrant (a) a person who is in the act of committing a felony; and (b) a person who he suspects on reasonable grounds to have committed a felony. A police officer has a good defence, whether a felony has actually been committed or not, as long as he can show reasonable grounds for suspicion. He further emphasized that suspicion is not proof.

[67] Mr. Edgecombe urged the Court to find that Inspector Thompson’s belief that Mr. Saunders gave the incorrect name was reasonable, as his evidence was that he did not believe him because of the tone in which it was communicated, the absence of identification and his failure to adhere to the instruction to dismount the motorcycle. He contended that section 61 does not preclude the officer from arresting a person in circumstances where it is suspected that the individual has provided a false, name **unless** he first gives that person “time to bring it”.

[68] The question is whether giving a false name or address is an arrestable offence. It is not. Section 61 of the Act provides for the levying of a fine for giving a false name. It does not give the power to arrest without a warrant.

[69] Mr. Saunders was therefore unlawfully arrested for 30 hours. In respect of the unlawful arrest/detention cause of action, Mr. Saunders claimed damages for (i) loss of work for two (2) days following the arrest and detainment at Elizabeth

Estates Police Station and (ii) costs of alternate transportation from the loss of use of the motorcycle seized by the police for ten (10) weeks, to which he is entitled. They are losses consequential to the unlawful imprisonment.

[70] As Mr. Saunders' imprisonment was unlawful, his constitutional right not to be arbitrarily arrested and detained pursuant to Article 19 of the Constitution was necessarily infringed.

[71] In his submissions, Mr. Moxey submitted that pleading redress pursuant to Article 19 of the Constitution was a typographical error and that his intention was to plead infringement under Article 17 which is the right not to be subjected to inhuman treatment. He contended that he is not precluded from claiming damages under Article 17 despite not pleading it by virtue of RSC O 18 r. 11 which states that it is not necessary to plead the law.

[72] Mr. Moxey's assertion of the effect of RSC O. 18 r. 11 with respect to the rights under the Constitution is misconceived. It is true that RSC O. 18 r. 11 states that law need not be pleaded but pleading a specific right pursuant to an Article of the Constitution is not pleading law. The relief sought pursuant to an Article of the Constitution is not pleading law. It is merely a reference to the article in which the fundamental right and freedom is codified. It is the right that is pleaded. Pleading a right pursuant to an article in the Constitution is not the law referred to in O. 18 r. 11.

[73] Therefore, Mr. Saunders cannot now claim relief under Article 17, having not pleaded it. He is limited to his pleading under Article 19.

Damages

[74] In 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.

“15. The learned judge did not identify in relation to the \$90,000 award for assault and battery and false imprisonment what sum was being attributed to each tort. There were several events she had found proved each of which constituted in law the assault and battery tort. It was entirely reasonable, in their Lordships' opinion, for the judge to have made a single award to cover all of them. It would, however, have been preferable, in their Lordships' view to have had separate awards for the assault and battery damages and the false imprisonment damages. Nor did the learned judge identify in relation to any of the awards the element attributable to compensatory damages, including aggravated damages, on the one hand and the element attributable to exemplary damages, which are punitive in character, on the other. A reading of the judgment from the above cited passage to the announcement of the amount of the awards (pages 92 to 96) suggests, their Lordships think, that the learned judge, having directed herself impeccably as to the approach she should adopt, formed a view as to the totality of the damages that Ms Merson should receive and then divided the sum, in round figures, between the three headings under which the awards were made. Their Lordships do not wish to be unduly censorious of this approach but it does make difficult a critical review of the quantum of the awards. It is to be noted that in the Tynes case (referred to in para.4 above), in which Sawyer CJ (as the learned judge had become) was the trial judge and in which the same causes of actions as were found proved in the present case were found proved (but where, measured in degrees of outrageous behaviour, the facts were several degrees below those of the present case) the Court of Appeal said:

"We wish to indicate that it would be more appropriate for the damages to be awarded under each head. The award should indicate the amount of damages awarded for assault and battery. There should be an identifiable award for false imprisonment and similarly for aggravated damages and also for exemplary damages."
(p. 14 of the judgment of Zacca P)

Their Lordships respectfully concur.”

[75] In **Ramon Lop v Attorney General of The Bahamas, Minister of Immigration, Director of Immigration and Officer in Charge of the Carmichael Detention Centre** 2017/CLE/gen/001180, this Court relied on the Court of Appeal’s reasoning in **Takitota v Attorney General of The Bahamas** SCCivApp No. 54 of 2004 that aggravated damages or exemplary damages are appropriate for unlawful detention. At para. 97, the Court stated:

“[97] The Court of Appeal reasoned that the unlawful detention falls squarely within the first category of cases where aggravated or exemplary damages is appropriate. See *Rookes v Barnard* [1964] AC 1129, where, at page 1226, Lord Devlin said that:

‘The first category is oppressive, arbitrary or unconstitutional action by the servants of the government.’”

[76] In **Merson**, the Board stated that it is preferable for the Court to identify what sum was being attributed to each tort. In the present case, the assault and battery inflicted upon Mr. Saunders was serious. He was badly assaulted at the hands of the officers. Under this head, I will make an award of \$50,000.

[77] Mr. Saunders was unlawfully arrested and falsely imprisoned for approximately 30 hours. In **Rod Andrew Bethel v The Commissioner of Police and The Attorney General** [2017/CLE/gen/00825], Stewart J awarded \$60,000 as damages for unlawful arrest and false imprisonment to Mr. Bethel who was imprisoned for 72 hours. She relied on one of her previous decisions in **Kevin Renaldo Collie v The Attorney General** (2017/CLE/gen/00916). Mr. Collie was awarded \$35,000 as damages for his unlawful arrest and false imprisonment for a period of thirty-two hours. The learned judge correctly stated that although there is no set formula provided for the calculation of damages, however existing precedents act as a guide for the amount that should be calculated. In the present case, I will award \$30,000.00 for 30 hours of unlawful arrest and false imprisonment.

[78] The global sum awarded to Mr. Saunders for assault, battery and false imprisonment is \$80,000.00.

[79] As Mr. Saunders’ imprisonment was unlawful, his constitutional right not to be arbitrarily arrested and detained pursuant to Article 19 of the Constitution was infringed. An appropriate sum for this head of damages is \$15,000.00.

Aggravated and exemplary damages

[80] Mr. Moxey argued that the offensiveness of the physical assault, battery and unlawful imprisonment of Mr. Saunders by police officers and the humiliation of the

experience in all the circumstances, he should be awarded both aggravated damages and exemplary damages as compensation for same. While I agree with Mr. Moxey that the oppressive, arbitrary and unconstitutional acts are suitable for the award of exemplary damages, an award of both damages for breach of constitutional right and exemplary damages would be duplicitous. This Court came to that conclusion in **Ousman Bojang v The Hon. Carl Bethel (In his capacity as Attorney General), The Hon. Brent Symonette (in his capacity as Minister of Immigration), William Pratt (In his capacity as Director of Immigration) and Peter Joseph (In his capacity as Officer in Charge of Carmichael Detention Centre)** 2017/CLE/gen/01166. At para 96, the Court stated:

“[96] However, Mr. Sears correctly submitted that an award of both exemplary damages and damages for breach of constitutional rights would be duplicitous. He relied on the Privy Council’s decision in Takitota where the Board explained that the purpose of the award of exemplary damages covers breaches of Constitutional rights. At paras 12, 13 and 15, the Privy Council stated:

“[12] The award of exemplary damages is a common law head of damages, the object of which is to punish the Defendant for outrageous behaviour and deter him and others from repeating it. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or unconstitutional action by the servants of the government, the ground relied upon by the Court of Appeal in the present case. It serves, as Lord Devlin said in *Rookes v Barnard* [1964] AC 1129 at 1223, [1964] 1 All ER 367, [1964] 2 WLR 269, to restrain such improper use of executive power. Both Lord Devlin in *Rookes v Barnard* and Lord Hailsham of St Marylebone LC in *Broome v Cassell & Co Ltd* [1972] AC 1027 at 1081, [1972] 1 All ER 801, [1972] 2 WLR 645 emphasised the need for moderation in assessing exemplary damages. That principle has been followed in *The Bahamas* (see *Tynes v Barr* (1994) 45 WIR at 26), but in *Merson v Cartwright and the Attorney General* [2005] UKPC 38, [2006] 3 LRC 264 the Privy Council upheld an award of \$100,000 exemplary damages, which they regarded as high but within the permissible bracket.

[13] The award of damages for breach of constitutional rights has much the same object as the common law award of exemplary damages. The relevant provisions

of the Bahamian Constitution are art 17 (inhuman or degrading treatment) and art 19 (deprivation of 29 personal liberty). The basis of the jurisdiction to award such damages was set out in *Attorney General of Trinidad and Tobago v Ramanoop* [2005] UKPC 15, [2006] 1 AC 328, [2005] 2 WLR 1324. Lord Nicholls of Birkenhead, giving the judgment of the Board, said at paras 17 – 20:...

...

[15] Their Lordships consider that it would not be appropriate to make an award both by way of exemplary damages and for breach of constitutional rights. When the vindictory function of the latter head of damages has been discharged, with the element of deterrence that a substantial award carries with it, the purpose of exemplary damages has largely been achieved. To make a further award of exemplary damages, as the Appellant's counsel sought, would be to introduce duplication and contravene the prohibition contained in the proviso to art 28(1) of the Constitution. They are of the opinion that the sum of \$100,000 is justifiable on the facts of the case as an award of constitutional or vindictory damages.”[Emphasis added]

[81] Mr. Bojang had also claimed aggravated damages but the Court refused to award damages under this head on the basis that it would be duplicitous since he was already awarded damages for the unlawful imprisonment. This is because, in awarding compensatory damages, (damages for assault, battery and false imprisonment) the Court takes into consideration the element of aggravation:

“[123] Mr. Bojang seeks aggravated damages in the sum of \$500,000. Aggravated damages are awarded when, among other things, the Defendant’s conduct has caused or is capable of causing injury to feelings, for any indignity, disgrace, humiliation or mental suffering occasioned from the conduct.

[124] In *Merson and Takitota*, the Privy Council stated that aggravated damages form a quite distinct head of damage based on altogether different principles. This is how Lord Carswell puts it in *Takitota* at para11:

“In their reference to aggravated damages in para 94 of their judgment the Court of Appeal appear to have equated them with exemplary damages, whereas they form a quite distinct head of damage based on altogether different principles. In awarding compensatory damages

the court may take account of an element of aggravation. For example, in a case of unlawful detention it may increase the award to a higher figure than it would have given simply for the deprivation of liberty, to reflect such matters as indignity and humiliation arising from the circumstances of arrest or the conditions in which the claimant was held. The rationale for the inclusion of such an element is that the claimant would not receive sufficient compensation for the wrong sustained if the damages were restricted to a basic award. The latter factor, the conditions of imprisonment, is directly material in the present case, and it would be not merely appropriate but desirable that the award of compensatory damages should reflect it. It may be that the Court of Appeal had it in mind when they expressed their intention in paragraph 90 to compensate the appellant "for the loss of 39 more than 8 years of his life and for the misery which he endured by being treated in a less than humane way." They did not spell it out in their judgment, though they were not obliged to do so: see *Subiah v Attorney General of Trinidad and Tobago* [2008] UKPC 47, para 11. Their Lordships do not find it possible to ascertain with sufficient clarity whether the Court of Appeal included any element of aggravation in their calculation of the compensatory award, and if so, how much represents that element. Although they stated in para 93 of their judgment that the sum of compensatory damages "does not take into account any assessment for aggravated or exemplary damages", it is not possible to determine whether in reaching that figure they had in fact taken account of aggravating factors."

[125] Mr. Bojang seeks aggravated damages for the following:

1. His 531 days' detention; and
2. His imprisonment in inhumane and degrading conditions (which was not established).

[126] The Court has already computed damages for his 531 days' detention so any award here will be duplicitous. I make no award under this head."

[82] As aggravating factors such as the injury to feelings, humiliation, pain and inconvenience of the incident have been accounted for in the compensatory award, an award for aggravated damages would be duplicitous.

Malicious prosecution

[83] Mr. Moxey submitted that Mr. Saunders was maliciously prosecuted when he was charged with two (2) counts of assaulting a police officer and one (1) count of resisting arrest. Both Counsel cited **Rod Andrew v The Commissioner of Police** 2017/CLE/gen/00825 as authority for the criteria of proving malicious prosecution. In that judgment, Stewart J cited with approval the elements set out in **Trevor Williamson v The Attorney General of Trinidad and Tobago** [2014] UKPC 29:

1. The prosecution by the defendant of criminal charge against the plaintiff before a tribunal into whose proceedings the civil court is competent to inquire;
2. The proceedings complained of terminated in his favour, if from their nature they were capable of so terminating;
3. The defendant instituted or carried on such proceedings maliciously;
4. There was absence of reasonable and probable cause for such proceedings and;
5. The plaintiff suffered damage.

[84] Only the third and fourth criteria are disputed between the parties. Mr. Moxey urged the Court to find that the evidence of both Defendants is that Mr. Saunders did not resist arrest clearly establishes that laying the charges for resisting arrest was malicious. However, the evidence relevant to determining whether the criminal charges were malicious is limited only to the evidence prior to and during that trial. Evidence of the Defendants to the contrary in this case is irrelevant. Further, and in any event, however, I did not understand the Defendants to have resiled from their initial position that Mr. Saunders resisted arrest.

[85] In an effort to prove malice, Mr. Moxey also relied on the fact that Mr. Saunders was acquitted. He argued that the fact that he was acquitted “makes it clear” that the Defendants’ dominant purpose of instituting the criminal charges against Mr. Saunders was an attempt to manipulate the legal system, thereby rendering the proceedings unreasonable. This argument is untenable. It does not follow from Mr. Saunders’ acquittal of the charges that the prosecution was malicious. It is merely

a starting point for proving malicious prosecution. The criminal standard of proof to be discharged by the prosecution in a criminal trial is a high one (beyond reasonable doubt). As such, the failure to discharge this high burden is not probative to showing malicious intention or an absence of reasonable or probable cause for such proceedings. Further, the evidence of the officers was supportive of the charges, as their evidence before and during that trial was that Mr. Saunders assaulted the officers and resisted arrest. In the circumstances, the criminal trial cannot be said to have been unreasonably brought, without probable cause or with malice. Accordingly, Mr. Saunders has failed to prove that the criminal proceedings constituted malicious prosecution.

[86] The special damages claimed by Mr. Saunders relative to the malicious prosecution cause of action (loss of five (5) days of work to attend the trial in the Magistrate Court and the costs of defending that trial) therefore fall away.

Damages for injuries caused by publication of Mr. Saunders' image on the internet

[87] Mr. Moxey contended that the officers circulated the video recording of the incident with the intention of causing harm and damage to Mr. Saunders' reputation. They knew that such publications on social media had the potential to be widely circulated and they acted carelessly and recklessly with the intent and knowledge of causing harm and damage to Mr. Saunders' reputation.

[88] Injury to reputation is not, of itself, a cause of action. It is a head of damages that is common to a defamation cause of action. Defamation is untrue publication that would tend to lower the plaintiff in the estimation of "right thinking" members of society (**Sim v Stretch** [1936] All ER 1237). The circulation of the video recording is not defamation, as it was not an untrue publication. Since he has no cause of action in defamation, it follows that Mr. Saunders is not entitled to damages for injury to reputation.

Interest

[89] Mr. Saunders claimed interest. In accordance with the Court of Appeal Judgment in **Douglas Ngumi v The Hon. Carl Bethel & Ors** SCCivApp. No. 6 of 2021, at paragraph 66, the Court of Appeal varied the order of the Court below (which awarded interest from the date of judgment to the date of payment) and stipulated that interest will run from the date of the filing of the Writ of Summons.

[90] In the present case, I will make a similar order that interest will run at the statutory rate of 6.25% per annum from 17 April 2019 (date of the filing of the Writ of Summons) to the date of payment. The statutory rate accords with section 2(1) of the Civil Procedure (Award of Interest) Act 1992 as amended by the Civil Procedure (Rate of Interest) Rules, 2008.

Costs

[91] As the successful party, Mr. Saunders is entitled to his costs. After some discussion with Counsel, costs were agreed at \$35,000.00.

Conclusion

[92] The order of the Court is that Mr. Saunders is entitled to damages under the following heads:

1. Damages for assault, battery and false imprisonment	\$80,000.00
2. Damages for breach of his constitutional right	\$15,000.00
3. <u>Special Damages</u>	<u>\$ 8,000.00</u>
<u>TOTAL AWARD OF DAMAGES</u>	<u>\$103,000.00</u>

[93] There will be interest at the statutory rate of 6.25% from the date of the filing of the Writ of Summons (17 April 2019) to the date of payment and costs agreed at 35,000.00.

Dated this 30th day of November 2022

**Indra H. Charles
Senior Justice**