

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

2017/CLE/GEN/01127

BETWEEN

JOSEPH AMIHERE

Plaintiff

AND

ATTORNEY-GENERAL OF THE BAHAMAS

1<sup>st</sup> Defendant

MINISTER OF IMMIGRATION

2<sup>nd</sup> Defendant

DIRECTOR OF IMMIGRATION

3<sup>rd</sup> Defendant

THE COMMISSIONER OF POLICE

4<sup>th</sup> Defendant

OFFICER IN CHARGE OF THE CARMICHAEL  
ROAD DETENTION CENTRE

5<sup>th</sup> Defendant

**Before:** Registrar, Camille Darville Gomez

**Appearances:** Mr. Frederick Smith, Q.C; Miss Raven Rolle and Miss Keath Smith with him for the Plaintiff

Mr. Shaka Serville and Mr Rashied Edgecombe for the Defendants

**Hearing Date:** 6 May, 2021

**Assessment of Damages – False Imprisonment – Assault and Battery – Breach of Constitutional Rights – Special Damages – Aggravated Damages – Exemplary Damages**

**JUDGMENT**

1. I gave my decision orally and promised to reduce my reasons into writing which I do now.

**Background Facts**

2. I commence by setting out a summary of the facts gleaned from the Plaintiff's Writ of Summons filed on September 25, 2017.

### **Unlawful Arrest and Imprisonment**

3. The Plaintiff, Joseph Amihere a citizen of the Republic of Ghana arrived in the Bahamas from Jamaica on September 25, 2010 as a visitor. On September 27, 2010 he was arrested and held at the Central Police Station for 5 days. On the 1<sup>st</sup> of October, 2010, he was unlawfully transferred by the Royal Bahamas Police Force to the Carmichael Road Detention Centre where he remained until May 16, 2017 when he was released on a successful Habeas Corpus Application.
4. In breach of the Criminal Procedure Code Act (Chapter 91) and The Constitution, Joseph Amihere was never taken before any court of law for breaching immigration laws. He was not the subject of a deportation under the Immigration Act. He was falsely imprisoned for 7 years contrary to Articles 15, 17 (1), 19 (1), 19(2) and 19 (3) of the Constitution.
5. On March 7, 2017 through his attorneys, Joseph Amihere wrote the office of the 2<sup>nd</sup> Defendant seeking assistance in securing his release from indefinite and unlawful custody and also assistance with obtaining travel documents for Joseph Amihere. There was no response from the 2<sup>nd</sup> Defendant. He remained falsely imprisoned for a further three months until the court ordered his release on May 16, 2017.
6. Through the assistance of the African Association in The Bahamas, he was able to renew his passport in order to have some form of documentation and to procure his release from his imprisonment.

### **Assault and Battery**

7. On May 16, 2017 Joseph Amihere appeared before the Supreme Court for his Habeas Corpus application. He was brought before the Court in shackles on his hands and feet, in breach of his rights under Articles 15 and 17(1) of the Constitution.
8. Between September 25, 2010 and May 16, 2017 Joseph Amihere was beaten several times by Defence force officers and Immigration officers during routine searches of the dorms at the Carmichael Road Detention Centre.
9. On several occasions when the Defendants conducted searches in the dorms they threw his clothing outside and if he objected they would use their hands and punch him repeatedly.

### **Breaches of Fundamental Rights under the Constitution**

10. On the 1<sup>st</sup> October, 2010 the 3<sup>rd</sup> Defendant transferred Joseph Amihere to the unlawful Carmichael Road Detention Centre contrary to the provisions of Article 17(1) of the Constitution.
11. On the day of his arrest the Immigration officers at the Carmichael Road searched and confiscated several personal items including a cell phone and BSD\$200 contrary to the

provisions of Articles 15 and 21 of the Constitution. On his release on May 16, 2017 the money was not returned to him.

12. The 5<sup>th</sup> Defendants therefore converted the funds to their own use and are liable to return the funds to Joseph Amihere.
13. Joseph Amihere was forced to sleep on the hard and dirty floor of the Central Police Station and subsequently on box springs or the floor of an inhumanely crowded Carmichael Road Detention Centre.
14. The toilets were always clogged and there were no cleaning products provided to properly clean the bathrooms so they could be used with dignity.
15. Joseph Amihere had to bathe in dirty water that rose nearly a foot off the floor in the clogged open showers. The floors were extremely dirty and stunk all the time.
16. As a result of the matter aforesaid, Joseph Amihere was deprived of his personal liberty for almost seven (7) years and has suffered injuries, sustained loss and damage.
17. Joseph Amihere is entitled to and claims aggravated and exemplary damages arising from his assault, battery, false imprisonment, inhumane and degrading treatment.

#### Particulars

- (a) The Defendants acted oppressively and arbitrarily in arresting Joseph Amihere in an unlawful facility without taking him before the Courts;
  - (b) The Defendants acted oppressively and unlawfully when they arrested Joseph Amihere in an unsanitary cell for 5 days;
  - (c) The Defendants acted oppressively, illegally and unreasonably when they breached the fundamental rights and freedom of Joseph Amihere;
  - (d) The Defendants detained Joseph Amihere at the Carmichael Road Detention Centre knowing that the conditions of detention were inhumane and degrading;
  - (e) The Defendants acted oppressively in searching and discarding personal clothing of Joseph Amihere while he was in their custody;
  - (f) The Defendants acted oppressively when they forced him to remain in unlawful detention for almost 7 years in inhumane conditions.
18. The Plaintiff claimed the following damages:

(1) General Damages (\$2,500x2,756 days)	6,890,000
(2) General Damages for assault and battery	300,000
(3) Special Damages	700
(4) Exemplary Damages	1,000,000

(5) Aggravated Damages	500,000
(6) Constitutional damages by way of compensation and vindication	2,000,000
<b>Total Damages claimed</b>	<b>10,690,700</b>

19. The parties entered into an agreement on the issue of liability called “Order on Judgement on Liability [by Consent]”, therefore, the only issue for consideration by the Court is the award of damages.

20. By the terms of the Judgment Mr Amihere:

- (i) Reduced his claim for false imprisonment by 48 hours (2 days);
- (ii) Agreed that the conditions in the Carmichael Road Detention Centre improved during the last six (6) months of his detention under the management of Mr. Peter Joseph;
- (iii) Withdrew his claims made pursuant to Articles 21 and 26 of the Constitution of The Bahamas
- (iv) Accepted an apology from the Defendants
- (v) In consideration thereof agreed that as at April 19, 2021, the aggravation of damages, occasioned by the Defendant’s Defence of the indefensible to April 19, 2021 and failure to apologize to April 19, 2021 had ceased.
- (vi) The Defendants conceded liability in all other respects to Mr Amihere’s claims as set out in his Writ and as evidenced in his Supplemental Witness Statement filed on April 1, 2021;
- (vii) The Defendants consented to the Order for damages to be assessed; and
- (viii) The Defendants as set out in the Judgment and below apologized to Mr Amihere; and
- (ix) The Defendants conceded that Mr. Amihere was not the person known as “Jimmy Miller”; and
- (x) The Defendants have agreed to pay Mr. Amihere’s costs of this action, to be taxed if not agreed, up to the time of the Defendants’ concession of liability and the entering of Judgment on Liability, that is April 19, 2021 on a solicitor and client full indemnity basis certified fit for two Counsel, and thereafter on the assessment on a party and party basis;
- (xi) In accordance with the concessions and as set out in the Judgment, the Defendants with deep regret and solemn empathy to Mr. Amihere and to his family accepted that his treatment was intolerable and inexcusable and apologized to Mr. Amihere, for the unlawful imprisonment and the treatment he received while unlawfully detained.
- (xii) The Judgment was accordingly entered for Mr. Amihere in terms set out above.

21. The facts set out in his Statement of Claim and in his Supplemental Witness Statement having been thus adjudged in his favour, there are not facts in dispute. Therefore, it only remained for this Court to assess damages on the basis of the facts set out and subject to the concessions made by Mr. Amihere at paragraphs 21 (i). (ii), (iii) and (iv).

22. The following heads of damages were claimed:

- (1) Special damages; and
- (2) General damages (which include false imprisonment, assault and battery) and
- (3) Aggravated, exemplary and punitive damages; and
- (4) Vindictory damages; and
- (5) Compensation under Article 19(4) of the Constitution; and
- (6) Damages for breaches of Mr. Amihere's Constitutional Rights under Articles 15, 17, 19(1), 19(2), 19(3) and
- (7) Interest.

23. For the reasons hereinafter set out, I awarded damages to the Plaintiff for false imprisonment, assault and battery, exemplary and aggravated damages in the global sum of \$751,900.00:

(1) General Damages (\$250x2,756 days x80%)	551,200
(2) General Damages for assault and battery	50,000
(3) Special damages	700
(4) Exemplary damages	100,000
(5) Aggravated damages	50,000
(6) Constitutional damages by way of compensation And vindication	-0-

**Total Damages Awarded** **751,900**

24. I refer to the submissions of Counsel for the Plaintiff regarding the various heads of damages claimed.

### **General Damages**

#### **(1) False Imprisonment**

25. Mr. Amihere was illegally imprisoned from September 27, 2010 (that is, police custody) to and including May 16, 2017 (that is, immigration custody) for 2758 days. From this should be deducted the 2 days credited in the Judgment leaving a total of 2756 days in respect of which Mr. Amihere is entitled to damages. There was no part of his detention that was lawful.

26. The facts are undisputed and it is pellucid that Mr. Amihere was held in inhumane and degrading conditions and was treated likewise as submitted by his Counsel. I refer to the submissions of his Counsel which stated that:

*"All of his civil, procedural and constitutional rights as pleaded and evidenced were breached and despite the letter of his attorneys dated March 7, 2017 to release him, he was only released after a Habeas Corpus trial on May 16, 2017."*

27. His Counsel invited the Court to review the sums awarded to successful plaintiffs in Bahamian cases in which damages were awarded for false imprisonment. The plethora

of cases were cited and compared to the instant case. The Plaintiff's Counsel submitted that Mr. Amihere's case was far more aggravated than the plaintiff, Lockwood who was awarded \$5,000 per day of false imprisonment in 2007 and, even more aggravated than the plaintiffs Merson or Tynes (\$45,000 to \$75,000 per day). It was his submission that had Mr. Amihere been held for two or three days each time that he was arrested that he would, given the circumstances in which he was held and all of the aggravating factors set out, have been entitled to a six-figure sum on each occasion.

28. In essence, his submission is that Mr. Amihere should not be awarded less because his period of illegal detention was continuous and longer. Further, he submitted that the repetition and cumulative effect on Mr. Amihere of the false imprisonment and mistreatment is itself an aggravating factor that should increase the award and also attract vindictory, punitive and exemplary damages.

29. I refer again to the submissions of Mr. Amihere's counsel:

*"Given that the courts in The Bahamas have repeatedly ruled that indefinite detention is unlawful, tapering off is not appropriate.*

*In addition to referring to cases in The Bahamas, Mr. Amihere urges a truly robust exemplary damage award as well to send a clear message to the State that this continued behaviour will no longer be tolerated by the Courts."*

30. He submitted that damages in the region of \$2,500 per day achieves a fair global daily sum by way of General Damages for all of the 2,756 days of false imprisonment endured by him and this would cover damages for:

- (i) The moral injury of having been falsely imprisoned (i.e. irrespective of loss);
- (ii) The pain, suffering;
- (iii) Injury to feelings;
- (iv) Compensation for specific pecuniary loss.

31. In assessing damages, it is more appropriate for awards to be made under each head claimed: para 15 in **Merson v Cartwright and Another** [2005] UKPC 38 relied upon.

32. The *locus classicus* in this jurisdiction for long periods of wrongful detention is the Bahamian case of **Atain Takitota v The Attorney General and others** [2009] UKPC 11. Cases like **Merson v Cartwright and Another** [2005] UKPC 38 and **Tynes v Barr** (1994) 45 WIR 7 are not helpful when the court is dealing with a long period of wrongful detention.

33. This decision was followed by the Honourable Justice Indra Charles (as she then was) in **Douglas Ngumi v the Attorney General of The Bahamas, the Minister of Immigration, the Director of Immigration and the Officer in Charge of the Carmichael Road Detention Centre** [2017] CLE/GEN 01127 which was on appeal to the Court of Appeal at the time of the hearing of this assessment. Her decision would later be appealed to the Privy Council and while both of these appeals have been

determined, it is only the decision of the Honourable Justice Indra Charles in the Supreme Court that I relied upon when delivered my decision in the instant case.

34. Damages for false imprisonment, assault and battery are incapable of exact estimation and their assessment must necessarily be a matter of degree, based on the facts of each case: **Jamal Cleare v Attorney General and others** [2013] 1 BHS No. 64 at paras 47 to 49 considered.
35. The Bahamian courts should determine what they consider to be an appropriate figure to reflect compensation for long periods of wrongful detention taking into account any element of aggravation. In assessing the proper figure for compensation, the courts should take into account that any figure they might regard as appropriate for an initial short period, if extrapolated, should ordinarily be tapered. In other words, for subsequent days, the daily rate will be on a progressively reducing scale. Furthermore, the figures are not intended to be applied in a mechanistic manner: **Takitota** at para. 17 and **Alseran and others v Ministry of Defence** [2019] Q.B. 1251 at paras 885 to 887.
36. Mr. Amihere claimed the total sum of \$6,890,000 under this head using his suggested daily rate of \$2,500.
37. I refer to the dicta of Justice Indra Charles (as she then was) in **Ngumi**:
- “As the Privy Council noted at para 9 of **Takitota**, it is usual and proper to reduce the level of damages by tapering them when dealing with an extended period of unlawful imprisonment: **Thompson v Commissioner of Police of the Metropolis** [1998] QB 498, 515, per Lord Woolf MR. So I will reduce quantum of damages by one-third which equals \$386,000.00”*
38. I consider the daily rate of \$250 to be fair and reasonable considering the socio-economic conditions in The Bahamas. However, instead of reducing the quantum of damages by one-third (which was done by Senior Justice Charles (as she then was in **Ngumi**) I have reduced it by twenty percent to reflect the longer detention by Mr. Amihere and the unlawfulness of his entire detention.
39. Therefore, for the torts of false imprisonment, I assess damages in the amount of \$551,200.

## **(2) Assault and Battery**

40. I refer to the submissions of Mr. Amihere’s Counsel and note that his evidence of assault and battery was uncontroverted.
41. There was undisputed evidence of the hurt, abuse and injury caused to Mr. Amihere by the many assaults and batteries occasioned him during the 2,758 days of false imprisonment at the Carmichael Road Detention Centre.

assessing the appropriate compensation. Indeed, when one examines the cases in which large damages have been awarded for conduct of this sort, it is not at all easy to say whether the idea of compensation or the idea of punishment has prevailed”.

47. The principles derived from Rookes v Barnard supra were adopted with approval in Takitota. At para. 12, Lord Carswell had this to say on exemplary damages:

“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 801, [1972] 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 emphasized 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.”

48. Mr. Smith QC relied on inter alia, the following evidence to support the award for exemplary damages:

- (a) Mr. Amihere was unlawfully arrested and falsely imprisoned by the Defendants for a total of 2,756 days;
- (b) Mr. Amihere’s ordeal lasted more than seven times longer than the maximum allowable term of imprisonment under the Immigration Act, had Mr. Amihere actually entered the country illegally [See 19(2) Bahamas Immigration Act, 1967];
- (c) The entirety of this incarceration was unlawful;
- (d) He was only released, and most unceremoniously, after habeas corpus proceedings were successful. The Defendants even at that time, persisted in defending the illegality of his false imprisonment;
- (e) Accordingly, defending the imprisonment all the way up to the day of trial was oppressive and perverse and can only be explained that the State had



42. Mr. Amihere's Counsel asked that the Court make an award of \$300,000 for assault and battery.

43. I award the sum of \$50,000.

### **(3) Special Damages**

44. This figure was undisputed, therefore, I award the sum claimed of \$700 for special damages.

### **(4) Exemplary damages**

45. Mr. Amihere seeks damages not only on a compensatory basis but also damages on an exemplary basis in the amount of \$1,000,000.00.

46. Exemplary damages are awarded when the state or government has taken oppressive, arbitrary or unconstitutional action: **Rookes v. Barnard** [1964] A.C.1129 is the landmark case for this head of damage. At page 1221, Lord Devlin stated thus:

**“Exemplary damages are essentially different from ordinary, damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. It may well be thought that this confuses the civil and criminal functions of the law; and indeed, so far as I know, the idea of exemplary damages is peculiar to English law. There is not any decision of this House approving an award of exemplary damages and your Lordships therefore have to consider whether it is open to the House to remove an anomaly from the law of England.**

**It must be remembered that in many cases of tort damages are at large, that is to say, the award is not limited to the pecuniary loss that can be specifically proved. In the present case, for example, and leaving aside any question of exemplary or aggravated damages, the appellant's damages would not necessarily be confined to those which he would obtain in an action for wrongful dismissal. He can invite the jury to look at all the circumstances, the inconveniences caused to him by the change of job and the unhappiness maybe by a change of livelihood. In such a case as this, it is quite proper without any departure from the compensatory principle to award a round sum based on the pecuniary loss proved. Moreover, it is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in**

determined to behave illegally regardless of the Constitution and the civil rights of the public and repeated court censure.

49. Accordingly, says Mr. Smith QC, an award of \$1,000,000.00 meets the justice of this case.

50. The instant case bears a striking similarity to **Ngumi** where Senior Justice Indra Charles (as she then was) awarded the sum of \$100,000.00 for exemplary damages.

51. I make an identical award of \$100,000.00 for exemplary damages due to the similar fact pattern as Douglas Ngumi.

#### **(5) Aggravated Damages**

52. Aggravated damages are awarded when, inter alia, 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.

53. According to the Privy Council in **Merson PC** awards for aggravated damages should be clearly identified.

54. Mr. Amihere sought aggravated damages for the following:

- (a) The Defendants have obstinately defended this case for 3 year and 7 months. They refused to even admit liability despite no evidence in defence.
- (b) Mr. Amihere was forced to plead guilty to a traffic offence for something he did not do, but Mr. Jimmy Miller did.
- (c) He was subjected to the indignity and humiliation of having no privacy. He was forced to use the bathroom while being watched by officers; or when sharing a small space with a large number of inmates.
- (d) He was caused intense anxiety and distress whenever transferred to Fox Hill Prison, to the point that he needed medical attention for his elevated blood pressure.
- (e) He suffered indignity and humiliation of officers throwing his clothes on the floor on numerous occasions.
- (f) On at least two occasions, Mr. Amihere was singled out alone with another inmate for extended beatings in areas away from communal spaces and security cameras. One of these beatings lasted half an hour.
- (g) He was frequently taunted by the officers who used verbal abuse and ethnic slurs, telling him to "go back to Africa".

55. He urged an award of \$500,000 for aggravated damages.

56. In **Ngumi**, Senior Justice Indra Charles (as she then was) noted that the Court of Appeal in **Takitota** had appeared to have equated aggravated damages with exemplary damages, therefore, one global award was made under that head.

57. In the instant case, I have awarded the sum of \$50,000 which I deem to be reasonable and consistent with the award of Douglas Ngumi which facts bear striking similarity to the instant case.

#### **(6) Damages for Breaches of the Plaintiff's Constitutional Rights**

58. Mr. Amihere claimed constitutional damages by way of compensation and vindication of \$2,000,000.

59. Article 17 of the Constitution provides that:

**“17 (1) No person shall be subject to torture or to inhumane or degrading treatment or punishment.**

**(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question authorize; the infliction of any description of punishment that was lawful in the Bahama Islands immediately before 10<sup>th</sup> July, 1973.”**

60. While I have compared the instant case to that of Douglas Ngumi, I do not find it necessary to award damages under this head despite the fact that Senior Justice Indra Charles (as she then was) had done so.

61. In **Antoine Justin Russell and the Attorney General and the Commissioner of Police SCCiv App No. 186 of 2017** the Court of Appeal noted the following in relation to a Plaintiff seeking constitutional relief where there is adequate means of redress under the common law:

**“25. Where there is a parallel remedy, constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse of the court's process.**

62. I have when awarding general damages reduced them not by one-third (as in Ngumi) but by twenty percent owing to the length of Mr. Amihere's detention and the conditions of the same. Additionally, when I considered the aggravating features of both Mr. Amihere's arrest and detention, I have awarded both aggravated and exemplary damages. Therefore, I refuse to make an award under this head of damage.

## Conclusion

63. Accordingly, there will be judgment for Mr. Amihere in the following sums:

1. General Damages (\$20 x 2756 days x 80%)	\$ 551,200.00
2. General Damages for assault and battery	\$ 50,000.00
3. Special Damages	700.00
4. Exemplary Damages	\$100,000.00
5. Aggravated Damages	\$ 50,000.00
6. Constitutional damages by way of compensation and vindication	\$ -0-

**TOTAL DAMAGES AWARDED** **\$751,900.00**

64. Interest will accrue at the statutory rate of 6.25% per annum from the date of issue of the Writ of Summons pursuant to section 2(1) of the Civil Procedure (Award of Interest) Act 1992 as amended by the Civil Procedure (Rate of Interest) Rules, 1992 to the date of payment.

Dated the 19<sup>th</sup> day of June, 2023

  
Camille Darville Gomez