

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

**2014/CLE/gen/000002**

**BETWEEN**

**HOLLIN WILSON**

**Plaintiff**

**AND**

**THE ATTORNEY GENERAL**

**Defendant**

**Before:** The Honourable Madam Justice Indra H. Charles

**Appearances:** Ms. Tommel Roker with her Mr. Donovan Gibson and Mr. Alex Morley of Munroe & Associates for the Plaintiff  
Mr. Kirkland Mackey of the Attorney General's Chambers for the Defendant

**Hearing Date:** 6 June 2017

**Damages - Aggravated or Exemplary Damages claimed for assault and false imprisonment.**

The Plaintiff had been arrested and detained by police officers of the Drug Enforcement Unit. During his period in detention the Plaintiff was told to drop down his pants in the presence of other police officers and he was beaten/spanked with a cutlass on the left side of his buttocks. The Plaintiff instituted this action against the Defendant for damages for assault and battery, false imprisonment and trespass to the person. The Defendant is sued pursuant to section 12 of the Crown Proceedings Act.

**HELD:**

- (1) On a balance of probabilities, the Court accepted the evidence of the Plaintiff as more credible and found that the Plaintiff was unlawfully arrested, falsely imprisoned, assaulted and beaten.**
- (2) Damages will be assessed on Tuesday, 22 August 2017 at 2.30 p.m.**

## JUDGMENT

### Charles J:

- [1] In this action, the Plaintiff alleged that he was unlawfully arrested, falsely imprisoned, assaulted and beaten by ASP Goodman in the presence of other police officers on 1 February 2013. As a consequence, he instituted the present Writ of Summons filed on 27 January 2014. The Writ is supported by a Statement of Claim filed on 25 March 2014.
- [2] The Attorney General is being sued pursuant to section 12 of the Crown Proceedings Act.
- [3] The Plaintiff testified that he is a self- employed mechanic .On 1 February 2014 at around 1 p.m. he was repairing a vehicle at a neighbor's house situate at West End Avenue, off Blue Hill Road. He needed a tool from his home so he ambled toward his house. He noticed a white jeep parked along the road in the front of his yard and two police officers in plain clothes had two persons cuffed against his fence. He recognized the two persons as they usually hang around an abandoned building adjacent to his property from which they peddle drugs.
- [4] The Plaintiff further testified that he went up against a wall to urinate. At that time, he noticed a police officer at the rear of the abandoned yard adjacent to his property. He indicated to the officer where he had seen the peddlers dug a hole to conceal their drugs.
- [5] At this point, another officer approached him and said that he suspected him of being in possession of dangerous drugs and he, along with the two other persons were taken to the Grove Police Station. From there, he was taken to the Drug Enforcement Unit ("DEU") office on Thompson Boulevard. While at the DEU, officers took him to an empty room where he was told to take off his hat and drop his pants. The Plaintiff complied.

[6] The Plaintiff was then beaten with a machete about the buttocks by ASP Goodman. He was later released without charge. The Plaintiff went to the Princess Margaret Hospital where he was treated for his injuries. His mother also took him to Magic Photo Studio where photographs of his injuries were taken. At Tab 9 of his Bundle of Documents, the Plaintiff exhibited the photographs of the injuries to his buttocks. The photographs speak for themselves.

[9] The Plaintiff also produced a medical report from Princess Margaret Hospital dated 7 February 2013 and signed by Dr. Caroline Burnett-Garraway: Tab. 1 of the Plaintiff's Bundle of Documents. To the doctor, he complained of pain to his buttocks **"after allegedly being hit on the buttocks with a cutlass by police the day before presentation."** He presented himself at the hospital on 2 February 2013.

[7] The Plaintiff's case is consistent with a letter dated 22 November 2013 that his attorney Munroe & Associates wrote to the Commissioner of Police.

[8] By their Defence filed on 24 June 2014 the Defendant denied the allegations. The gist of the defence is as follows:

- a. That on 1 February 2013, acting on information received, ASP Goodman, Police Constable Beneby and other police officers went to West End Avenue.
- b. As a result of their surveillance operation, they observed suspicious activities. They arrested two suspects namely Perry Cooper and Darwin Woodside. Both suspects were both taken to Grove Police Station where they were booked in, arrested, charged and subsequently taken before the Courts.
- c. ASP Goodman and Police Constable Beneby both categorically denied that they had any interaction with the Plaintiff. They both alleged that they had never seen the Plaintiff before and they do not know him.
- d. They alleged that they have no knowledge of the allegations made by the Plaintiff.

[9] The Defence filed by the Defendant is consistent with the oral testimony of ASP Goodman and Police Constable Beneby. They both confirmed that they were in the area on the day and time in question and they arrested two persons. They emphatically denied that they arrested the Plaintiff. In fact, their defence is that they had never seen the Plaintiff before even though they have both frequented this drug-infested area on numerous previous occasions. In the case of ASP Goodman, he has been part of the DEU for in excess of 27 years. It is passing strange that the Plaintiff is not even known in the area where he resides.

[10] That being said, I had the advantage of seeing and hearing the witnesses who testified before me. I was able to observe their demeanour. On a balance of probabilities, I prefer the evidence of the Plaintiff to that of the witnesses for the Defendant.

[11] Learned Counsel Mr. Mackey submitted that the Plaintiff could have brought forward witnesses to testify. He read extensively from the case of **Bernard Kenneth Bonamy II and Dwight Miller v Police Constable 3002 William Hunt et al** [2007/CLE/gen/00088] (unreported) – Judgment of Sir Michael Barnett. Sir Michael opined that the case is a troubling one. He was satisfied that an incident occurred on the morning in question involving the Plaintiffs and the police but he made no finding that it took place in the manner alleged. He was not satisfied that the Plaintiffs have proven that it was the First Defendant who assaulted them. At paragraph 13 of the judgment, Sir Michael said:

**“On the one hand, the only persons who give evidence on behalf of the Plaintiffs as to the incident were the Plaintiffs themselves. Although there were other independent persons who should have been available to give evidence (Fowler and the security officer) they were not called. Their evidence could have assisted the court....”**

[12] The burden is on the Plaintiff to satisfy the Court on a balance of probabilities that he was unlawfully arrested, falsely imprisoned, assaulted and beaten by ASP Goodman in the presence of other officers on 1 February 2013. Undoubtedly, if there are independent persons who are willing to give evidence,

they should be called. But each case turns on its own peculiar facts and circumstances. For example, as the Plaintiff testified, he was being oppressed in the presence of other police officers. The Court is not so naïve as to believe that police officers will come forward voluntarily to testify against other police officers especially those who are higher in rank as ASP Goodman was.

[13] Learned Counsel Mr. Gibson who appeared for the Plaintiff correctly submitted that although the Plaintiff was the only witness to testify, his evidence is corroborated by documentary evidence namely the medical report from Princess Margaret Hospital and the photographs. It is incontrovertible that documentary evidence is far better than the evidence of eye witnesses who might be lacking in credibility. It seems strange to me that the Plaintiff will lay blame on ASP Goodman, a senior officer, for no apparent reason. In fact, according to ASP Goodman, he had never seen the Plaintiff before.

[14] I therefore find the Plaintiff's evidence to be more credible. I believed him when he stated that he was unlawfully arrested, falsely imprisoned, assaulted and beaten by ASP Goodman in the presence of other police officers.

[15] Having arrived at this conclusion, I will hear Counsel on quantum of damages on Tuesday 22 August 2017 at 2.30 p.m. Both parties are to email submissions to the Court by Friday, 18 August 2017.

**Dated this 9<sup>th</sup> day of June A.D., 2017**

**Indra H. Charles**  
**Justice**