COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2016/CLE/gen/00623

BETWEEN

DARAN NEELY

Plaintiff

AND

THE ATTORNEY GENERAL

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Wayne Munroe KC and Krystian Butler for the Plaintiff
Keith Cargill for the Defendant

26 March 2021, 24 January 2022 and 9 May 2023

JUDGMENT

WINDER, CJ

Introduction

[1.] This is an unlawful arrest and false imprisonment claim brought by the Plaintiff arising out of the actions of officers of the Royal Bahamas Police Force. The Plaintiff alleges that he was unlawfully arrested while on bail and detained in police custody in December 2015 and February 2016. He seeks damages, aggravated damages, damages for breach of constitutional rights, interest and costs as a result thereof. The Attorney General has been sued as representative of the Crown pursuant to section 12 of the ***Crown Proceedings Act***.

Background

[2.] The Plaintiff is allegedly gang affiliated and "known" to the police. He has been charged with criminal offences in the past. In 2014, he was released on bail on conditions requiring him to be electronically monitored and to remain at his family home on Avocado Street in the Pinewood Gardens subdivision in the Southern District of New Providence.

[3.] According to the Plaintiff, the genesis of these proceedings is that:

i) on 23 December 2015, he was arrested at his residence and taken to the South Beach Police Station and held in police custody without charge until 1 January 2016.

ii) on or about 3 February 2016, he was arrested at his residence and taken to the South Beach Police Station and held in police custody without charge until 8 February 2016.

iii) on both 23 December 2015 and 3 February 2016, he was arrested without any lawful justification; and

iv) police officers made threats on his life and damaged his property.

[4.] It is common ground that police officers arrested the Plaintiff in December 2015 and in February 2016. However, the Defendant contends that: (i) the Plaintiff was arrested on 24 December 2015 and held in police custody until 26 December 2015; (ii) the Plaintiff was arrested on 3 February 2016 and held in police custody until 8 February 2016 after an extension was obtained from the Magistrate's Court; and (iii) the police officers that arrested the Plaintiff acted within the scope of their duties and upon information which amounted to reasonable and probable cause to arrest the Plaintiff.

[5.] Trial of the Plaintiff's claim took place before me on 26 March 2021. Earlier trial dates were vacated because the Defendant failed to comply with this Court's case management directions. Despite the fact that standard case management directions were given, trial took place without the Defendant providing discovery and, therefore, without

the Defendant disclosing the full documentary record relating to the arrest and detention of the Plaintiff. Mr. Cargill explained that this was because the Defendant had difficulty getting information regarding events in February 2016 from the police. That explanation warrants little sympathy, however, given the lengthy lead up to trial.

Evidence

[6.] The Plaintiff and his mother, Carolyn Neely ("Mrs. Neely"), gave evidence for the Plaintiff at trial. The Plaintiff's girlfriend, Sandy McPhee, and the Plaintiff's cousin, Renaldo Hepburn, filed witness statements but were not called by the Plaintiff to give evidence.

[7.] Detective Constable 2970 Carlos Johnson ("DC Johnson"), Inspector (formerly Sergeant 2283) Ricardo Hanna ("Inspector Hanna") and Corporal 2694 Marvin Hepburn ("Corporal Hepburn") gave evidence for the Defendant at trial.

The Plaintiff's evidence

[8.] The Plaintiff's witness statement filed on 28 June 2019 was admitted into evidence as his evidence-in-chief. The Plaintiff also identified two estimates for security cameras from a business called Security Systems dated 5 January 2016 and 10 February 2016; those estimates were admitted into evidence through him. The Plaintiff was subject to cross-examination but was not re-examined.

[9.] The Plaintiff said that, on 23 December 2015, he was at his residence in Pinewood Gardens, where he resides with his family, when he heard loud noises which appeared to be banging on his front gate and police officers shouting "open the f----- gate". The police officers attempted to breach his gate with a maul. In so doing, they damaged the outside lock on the gate and dented it. The police officers also used a barbed-wire cutter to pull down installed barbed wires which were over the gate in an effort to clear a path to jump the gate.

[10.] The Plaintiff accepted that he had not adduced any photograph or video evidence of the alleged damage to his gate when this was put to him in cross-examination. The Plaintiff said that he did not have any pictures of the alleged damage because the police carried away his security cameras. The Plaintiff acknowledged that no family member had produced any photograph evidence to support his property damage claim but he made no effort to explain this.

[11.] The Plaintiff initially said that the police officers damaged his gate where they tried to breach it (i.e. where they were banging on it) and he could not recall if there was damage to the frame and strip of the gate. However, when asked in cross-examination

about a quote for repairs from Johnson's Welding, the Plaintiff relied on the quote as evidence of the precise damage to his gate and confirmed that, as the quote suggested, the exact same repairs to the gate were required in December 2015 and February 2016. The Plaintiff denied Mr. Cargill's suggestion that the repairs were the result of "everyday opening and closing".

[12.] Continuing to speak of events on 23 December 2015, the Plaintiff said that he and his family opened the gate for the police officers (he explained in cross-examination that the damage to the outside lock did not open the gate as there was an inside lock) and about five officers entered his yard and then his home. It was at this time, when the gate was opened, that the Plaintiff saw the maul and barbed-wire cutter used by the police.

[13.] According to the Plaintiff, once the officers entered his home, they told him to put on clothes and that he was "locked up". They also told him that "it is the normal, some say murder others say normal routine". The police officers took pictures of the Plaintiff and everyone in the house and questioned each of them as to their identities and why they were at the property. The police officers had their guns drawn and pointed. In addition to the police officers in his home, the Plaintiff heard other police officers on his roof, in his yard and in a neighbor's yard.

[14.] The Plaintiff said that the police officers that entered his home removed all of the security cameras and security footage at his residence (which captured the police arriving at his residence) and searched the rooms of his house.

[15.] The Plaintiff said that he and his cousin, Renaldo Hepburn, who was at his residence at the time, were arrested, taken into custody, booked at the South Beach Police Station and later transported to the Grove Police Station. The Plaintiff was released on the same day as his cousin and collected from the Central Detective Unit by his girlfriend. According to the Plaintiff, he and his cousin were never questioned or interviewed while in police custody. He slept on a concrete floor while in custody as there was no bedding.

[16.] The Plaintiff provided comparatively little detail regarding his arrest in February 2016.

[17.] According to the Plaintiff, during the evening of 3 February 2016, he was home in his room when he heard "a noise outside". His mother informed him that it was the police. He told her "let them in, it's the regular". They entered, he was arrested, and then he was first taken to the South Beach Police Station to be booked in and then to another police station where he was placed in a holding cell until he was released. He did not specify

the date of his release in his evidence, though he did say he was released from the Central Detective Unit and allowed to charge his ankle monitoring device.

[18.] The Plaintiff was equivocal as to whether security cameras had been removed in February 2016. He initially could not recall whether he had replaced the cameras which he said the police took in December 2015 by February 2016. However, when shown the Security Systems invoice dated 10 February 2016 for security cameras, he asserted the police had taken his cameras. According to the Plaintiff, he used the security cameras for his own security and, once they were removed, he had to get them replaced to watch his surroundings.

[19.] In cross-examination, the Plaintiff said that he had been "continuously harassed" by the police since being released on bail in 2014 but he had only brought proceedings in relation to his arrest and detention in December 2015 and February 2016 as he "thought it was time" after the incidents. It was clear the Plaintiff had considerable exposure to the police, as he on a number of occasions used the words "every time" in his evidence when describing the actions of the police. The Plaintiff admitted he had been arrested by police more than twice between 2015 to 2020 but confirmed the ambit of his claim was limited to the arrests in December 2015 and February 2016.

[20.] The Plaintiff said in his witness statement that Anthony Ferguson and other police officers made numerous threats on his life and that, while at his house, police officers told him "I will soon die; they will kill me"; however, the timing of this latter incident was not clear from his evidence.

[21.] The Plaintiff disagreed with Mr. Cargill's suggestion that his witness statement was a fabrication. The Plaintiff also disagreed with the suggestion put to him that the true version of events in December 2015 was that the Police arrested him at his residence on 24 December 2015 after entering through his open gate and meeting him in his yard with a blanket and a pillow waiting to be arrested, as he had obtained information they would be coming to arrest him.

Mrs. Neely's evidence

[22.] Mrs. Neely's witness statement filed on 24 June 2019 was admitted into evidence as her evidence-in-chief. She identified a quote from Johnson's Welding for repairs to her gate dated 23 December 2016; that quote was admitted into evidence through her. She was subject to cross-examination but was not re-examined.

[23.] While I have considered her evidence in its entirety, in the interest of brevity, I do not wish to dwell on the details of Mrs. Neely's evidence. It suffices for the purposes of this judgment that I record the following matters.

[24.] Firstly, Mrs. Neely's evidence regarding the Plaintiff's December 2015 arrest and detention and February 2016 arrest and detention generally supported the Plaintiff's evidence. Mrs. Neely did not distance herself from the Plaintiff's version of events. To the contrary, she provided additional detail regarding the events detailed in the Plaintiff's evidence including the alleged damage to the gate.

[25.] Secondly, Mrs. Neely's evidence provided further particulars regarding the threats allegedly made by police officers during the December 2015 incident. According to Mrs. Neely, Anthony Ferguson asked if the Plaintiff was insured, officers told the Plaintiff "he will soon be dead" and another officer told her "we run the road; we decide who will live and who will die".

[26.] Thirdly, on the subject of her family's interactions with the Police, Mrs. Neely confirmed that her son had been "in trouble with the law before" and that he was known to police. She claimed that police officers had harassed her and her family ever since the Plaintiff was released on bail in 2014 and that she and the Plaintiff feared for their lives. She referred to the police having repeatedly damaged her property and having taken five sets of security cameras.

[27.] Fourthly, Mrs. Neely said that, between December 2015 and February 2016, the Plaintiff was taken into custody, held for long periods of time of at least five days and then released without being charged approximately every two weeks. On "every occasion", the police officers damaged their property, from knocking down gates and doors to removing their security cameras and locks.

[28.] Fifthly, Mrs. Neely was occasionally prone to over-statement or exaggeration in her evidence.

[29.] Finally, when challenged by Mr. Cargill, Mrs. Neely agreed that she would do anything for her son but when it was put to her that her entire witness statement was fabricated and that she would lie for her son to protect him, she maintained that her witness statement contained the truth and that she would not lie for her son.

DC Johnson's evidence

[30.] DC Johnson's witness statement filed on 11 September 2020 was admitted into evidence as his evidence-in-chief subject to an amendment to reflect that his unit received

both information and instructions from Superintendent Fernander. He was subject to cross-examination and re-examined by Counsel for the Defendant.

[31.] DC Johnson identified himself as a member of the police force since 2005 who was, at the time of his witness statement, attached to the Southeastern Police Station in the Southeastern Division. In December 2015, he was a member of the Detective Enforcement Team attached to the Central Detective Unit.

[32.] DC Johnson said that, on 24 December 2015, at about 1:15 pm, while on mobile patrol as part of Enforcer Unit #18, which consisted of Inspector Hanna, Corporal Hepburn and himself, they received information and instructions from Superintendent Fernander to proceed to the residence of the Plaintiff in Pinewood Gardens and to place him into custody in reference to suspicion of armed robbery and firearm possession.

[33.] DC Johnson said that, as a result of the information received, his unit and several other Enforcer units went to the Plaintiff's residence, where they met his heavily fortified gate already opened and the Plaintiff standing outside with his blanket waiting to be arrested.

[34.] DC Johnson said that he arrested the Plaintiff and cautioned him with reference to armed robbery and firearm possession. The Plaintiff was then taken to the Southeastern Police Station to be booked in and appeared to be well and had no complaints.

[35.] DC Johnson said that at no time was the Plaintiff's gate or any other property belonging to the Plaintiff damaged by his unit or any other unit on scene. DC Johnson said that the Plaintiff had already been alerted by an unknown source to be on the look-out for the police's arrival at his residence.

[36.] When asked in cross-examination what information and instructions he received from Superintendent Fernander, DC Johnson said that the information or instructions he received were to proceed to the Plaintiff's residence with reference to armed robbery and possession of a firearm and to take him into custody. DC Johnson admitted he was not told who the victim of the suspected armed robbery was or what firearm was allegedly used in the robbery.

[37.] DC Johnson accepted when it was put to him that if the police think somebody has a firearm, they can conduct a search without a warrant. He admitted that the police did not search the Plaintiff's home and that that was not how they customarily operate. His explanation for this was that his unit and the other units did not attend the Plaintiff's home to conduct a search; they were executing the arrest of the Plaintiff.

[38.] DC Johnson accepted that the Plaintiff was notorious to the police but said he was not aware of whether the police believed the Plaintiff was the leader of the "Dirty South Gang" (a fact suggested by Mr. Munroe KC). DC Johnson was aware, however, that the Plaintiff had been taken into custody for "some of these matters in the past".

[39.] When questioned on the Defendant's version of events by Mr. Munroe KC, DC Johnson said that the police met the Plaintiff standing in the road in front of his fortified gate. DC Johnson denied that, if he arrived at a heavily fortified gate which was closed, he would try to gain access to it. He said that, in that instance, he would have awaited further information or instructions from his superior.

[40.] DC Johnson said he was not aware of the police carrying equipment to cut barbed wire or mauls and sledgehammers to break down doors because he did not operate that equipment. DC Johnson denied that the police damaged the Plaintiff's gate or that they took his security cameras.

[41.] In re-examination, DC Johnson confirmed that he had been given information and instructed to go to the Plaintiff's house and to place him under arrest for the offences of armed robbery and firearm possession and that, normally, he would carry out his duties as a police officer when so instructed.

Inspector Hanna's evidence

[42.] Inspector Hanna's witness statement filed on 11 September 2020 was admitted into evidence as his evidence-in-chief subject to an amendment to reflect that his unit received both information and instructions from Superintendent Fernander. The Detention Record made up after the Plaintiff's arrest in December 2015 was entered into evidence through him. Inspector Hanna was subject to cross-examination but was not re-examined.

[43.] In his witness statement, Inspector Hanna identified himself as a member of the police force since 1993 who was, at the time of his witness statement, attached to the Command Centre at Police Headquarters. In December 2015, he was a member of the Detective Enforcement Team attached to the Central Detective Unit.

[44.] Inspector Hanna said that, on 24 December 2015, at about 1:15 pm, while on mobile patrol as part of Enforcer Unit #18, which consisted of DC Johnson, Corporal Hepburn and himself, his unit received information and instructions from Superintendent Fernander to proceed to the residence of the Plaintiff in Pinewood Gardens with several other Enforcer units and to place him into custody on suspicion of armed robbery and possession of an illegal firearm.

[45.] Inspector Hanna said that his unit and several other Enforcer units went to the Plaintiff's residence to execute the arrest as instructed. When his unit arrived at the Plaintiff's home, he noticed that the Plaintiff's heavily fortified gate was open and the Plaintiff was present and in possession of a blanket and appeared to be awaiting his arrest. According to Inspector Hanna, no unit at the scene had to damage or destroy the Plaintiff's heavily fortified gate as it was obvious the Plaintiff had been alerted by unknown sources that the police would be arriving at his residence.

[46.] Inspector Hanna said that the Plaintiff was searched and informed of the reason for his arrest by DC Johnson, at which time he complied with instructions. The Plaintiff was then taken to the Southeastern Police Station to be booked in and appeared to be in good health.

[47.] During cross-examination, Inspector Hanna said that normally three to four Enforcer units work together to apprehend suspects. The number of persons in each unit varies.

[48.] Inspector Hanna did not accept that the police had the Plaintiff "marked" as the leader of the "Dirty South Gang", nor did he agree with Counsel for the Plaintiff's suggestion, that the police would treat the Plaintiff differently (i.e. unfairly) if they believed he was a member of a street gang. However, he did accept that the police must be properly prepared to meet whatever force they might encounter.

[49.] Inspector Hanna also did not accept that there were quite a number of police officers at the Plaintiff's gate; that the Plaintiff was not outside when his unit arrived at his residence; or that police officers tried to breach the Plaintiff's gate. The following notable exchange occurred in cross-examination:

> Q. I would suggest there was quite a number of you at this heavily fortified gate, and he was not outside when you arrived, isn't that true?
> A. He was outside like many other occasions apparently he might have had some kind of insider where basically, when we rolled up to his premises he was always, especially when I'm working and I have to go there, he is always outside with his blanket, and he acknowledge me and he would say, "Sergeant what you'll locking me up for again man" and all that. So, he is quite aware. Nothing like that ever happened where we have to cause any kind of damage to that fortified gate what they have in the front of that yard.
> Q. Okay. He is a gang member and probably involved in other street gangs and you would just meet him standing in the road, correct?
> A. On those particular occasions where the need arise for us to proceed to his residence, he usually, most all of the time I have known myself, he always meets us with the gate open and he has a blanket in his hand.

[50.] When asked by Mr. Munroe KC about whether the police carried tools to gain access to buildings so suspects could not destroy evidence, Inspector Hanna said that he could not speak for other units but his unit never had such instruments. He said that he would not have been told about what instruments would have been available to other units at briefing meetings.

[51.] When asked by Mr. Munroe KC about whether there were units in the Select Enforcement Unit that dealt with breaching buildings and premises, Inspector Hanna said that he was never present when a residence needed to be breached as, in his experience, people usually cooperated with police. He also said that police officers on the scene would require instructions from a superior officer before breaching a residence.

[52.] Inspector Hanna could not confirm whether the Plaintiff's home had been searched for a firearm because he said his unit left the scene after they arrested the Plaintiff to proceed to the nearest police station; however, he did confirm his unit did not search for the weapon the Plaintiff allegedly had.

Corporal Hepburn's evidence

[53.] Corporal Hepburn's witness statement filed on 11 September 2020 was admitted into evidence as his evidence-in-chief subject to an amendment to reflect that his unit received both information and instructions from Superintendent Fernander. He was subject to cross-examination but was not re-examined.

[54.] Corporal Hepburn identified himself as a member of the police force since 2002 who was, at the time of his witness statement, attached to the Arawak Cay Police Station. In December 2015, he was attached to the Central Detective Unit as a member of the Detective Enforcement Team.

[55.] Corporal Hepburn said that, while on duty on 24 December 2015, at about 1:15 pm, acting on information and instructions from Superintendent Fernander, he proceeded to the Plaintiff's residence as part of Enforcer Unit #18, which consisted of DC Johnson, Inspector Hanna and himself, with several other Enforcer units to execute an arrest of the Plaintiff for suspicion of armed robbery and possession of an illegal firearm. Corporal Hepburn said that about ten police officers attended the Plaintiff's residence with his unit.

[56.] Corporal Hepburn said that, when his unit went to the Plaintiff's residence to execute the arrest, as instructed, he observed the Plaintiff coming out of his yard through his gate, which was wide open. The Plaintiff had in his possession what appeared to be either a blanket or a sleeping mat and also a pillow. The Plaintiff was searched, cautioned

and arrested by DC Johnson. The Plaintiff was then taken to the nearest police station to be booked in.

[57.] Corporal Hepburn said that he could say "with certainty" that no police officers caused any damage to any part of the Plaintiff's property or to any item on the Plaintiff's property during the execution of the Plaintiff's arrest. The Plaintiff's residence was "left great and in order".

[58.] Corporal Hepburn accepted in cross-examination that, "hypothetically speaking", police officers might have had the ability to break into a property, but he dismissed as "ludicrous" the suggestion that the police had used a sledgehammer on the Plaintiff's gate. He said that, when his unit arrived at the Plaintiff's property, the Plaintiff's gate was open and he was already coming out of it. Corporal Hepburn denied his unit had tools to breach a locked gate, but he could not say if other units had the necessary tools.

[59.] When asked about the information he received from Superintendent Fernander, Corporal Hepburn said that the information his unit received was that the Plaintiff was wanted in reference to suspected armed robbery and possession of a firearm. He confirmed that he was not given information about when the suspected armed robbery took place, who was the victim of the suspected armed robbery or what type of firearm the Plaintiff was suspected to possess. Corporal Hepburn accepted that the Plaintiff was believed by police to be a member of a gang and to have had a gun.

[60.] Corporal Hepburn said that his unit collected the Plaintiff from outside his home when they arrived at his residence and took him to the East Street South Police Station without conducting a search of his residence and without anyone conducting a search in his presence. He said that if the other officers conducted a search after his unit left the scene, he was sure his unit would have heard of it if they found something.

The Defendant's documentary evidence

[61.] None of the Defendant's witnesses were involved in the arrest and detention of the Plaintiff in February 2016. In an effort to remedy this deficiency in the defence evidence, the Defendant adduced on the day of trial (i) a purported Order dated 5 February 2016 made by Magistrate Constance Delancy (as she then was) under ***section 19*** of the ***Criminal Procedure Code Act*** authorizing the detention of the Plaintiff for a further period of up to seventy-two hours and (ii) the Ex Parte Summons and Affidavit in Support by virtue of which the purported Order was obtained. However, as Mr. Munroe KC objected to the documents and the Defendant did not call a witness through which the documents could have been admitted, they were ultimately not admitted into evidence.

Issues

[62.] It is common ground between the parties that the core issue in these proceedings is whether or not the arrest and detention of the Plaintiff in December 2015 and later in February 2016 was lawful. As a secondary issue, this Court must determine whether the Plaintiff's property was damaged as alleged. If the Plaintiff's arrest and detention on either or both occasions was unlawful, this Court must determine the appropriate compensation or damages to be awarded to the Plaintiff.

Submissions

[63.] The submissions made by the parties are summarized below, though not necessarily in the precise order presented by them. The Plaintiff lodged written opening submissions dated 31 August 2020 and undated written closing submissions. The Defendant lodged written opening submissions dated 26 March 2021 and undated written closing submissions. The Defendant's closing submissions were not received until 9 May 2023 notwithstanding closing submissions were due within 30 days of trial.[1]

The Plaintiff's submissions

[64.] The Plaintiff submitted that his arrests were unlawful because there was no evidence that the police had reasonable grounds to suspect that he had committed an offence.

[65.] The Plaintiff submitted, relying on ***Calliste v R (1994) 47 WIR 130*** and ***O'Hara v Chief Constable of the Royal Ulster Constabulary (1997) AC 286***, that, while an arresting officer must have suspicion that the person arrested committed an offence, it must be reasonably based, which is an objective test. Here, so far as the Plaintiff's arrest in December 2015 was concerned:

i) the Defendant's witnesses all alluded to not receiving the particulars of the suspected robbery or firearms offence for which he was arrested; and

ii) the officers were merely directed to arrest him by Superintendent Fernander.

[66.] Mr. Munroe KC submitted that the Plaintiff's arrest on the direction of Superintendent Fernander was improper and constituted an arbitrary and wrongful arrest by law. At no point in time were the arresting officers given correspondence or direction sufficient to form a reasonable suspicion that the Plaintiff had committed a crime.

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[1] Such tardiness should not be repeated without appreciating that adverse consequences may follow. As this Court said in ***Hughdon Bowe and others v Shanique Rolle and others 2018/CLE/gen/01171*** at paragraph 38, "un-explained non-compliance with the Court's directions is to be deplored. Counsel must not assume that such non-compliance will be tolerated as a matter of course".

[67.] Mr. Munroe KC further submitted that, if the arresting officers were of the belief that the instructions given by Superintendent Fernander were of any merit, given the nature of their instructions and the mandate of the police, a search warrant ought to have been produced and a search ought to have been conducted.

[68.] The Plaintiff further submitted that his arrest in December 2015 was unlawful because the arresting officer ought to have informed him of the true ground of his arrest. The Plaintiff relied on ***Christie v Leachinsky [1947] AC 573*** in support of this proposition. Mr. Munroe KC submitted that, based on the utterance that the Plaintiff's arrest was "normal routine" or "murder" (which was completely different from the instructions the Defendant's witnesses said they were acting on in their testimony), it was unclear to the Plaintiff exactly what the reason for his arrest was.

[69.] With respect to his arrest and detention in February 2016, the Plaintiff submitted that his arrest was an arbitrary arrest carried out by the police, as none of the Defendant's witnesses produced any evidence "challenging" (sic) (presumably, "supporting") the arrest.

[70.] The Plaintiff also submitted that the fact he was detained for a period of over two hundred hours in total without being interviewed or charged with an offence after being arrested amounted to a false imprisonment. The Plaintiff relied upon ***sections 18*** and ***19*** of the ***Criminal Procedure Code Act*** and the cases of ***R v Holmes ex parte Sherman (1981) 145 JP 337*** and ***Gilford Lloyd v Superintendent Cunningham and others [2017] 2 BHS J. No. 76*** in support of that submission.

[71.] The Plaintiff submitted that his constitutional rights pursuant to ***Articles 19*** and ***21*** of ***the Constitution*** were violated as a result of the police's actions.

[72.] The Plaintiff sought to recover special damages for the damage to the gate at his family home and the removal of his surveillance systems based upon the estimates/quotes admitted into evidence. The Plaintiff did not plead the removal of his surveillance systems as special damages, however.

[73.] The Plaintiff also sought to recover general damages for his unlawful arrest and detention. Mr. Munroe KC made submissions on the appropriate quantum of award and referred to the following authorities: ***Thompson v Metropolitan Police Commissioner [1998] QB 498***; ***Robert Kane v The Attorney General [2019] 1 BHS J. No. 153***; ***Merson v Cartwright [1994] BHS J No. 54***; ***Tynes v Barr [1994] BHS J No. 27***; ***Delano Kelton Smith v Commissioner of Police and Attorney General***; and ***Gilford Lloyd v Superintendent Cunningham and others [2017] 2 BHS J. No. 76***. Mr. Munroe KC

submitted that aggravated damages should be awarded based on the malicious acts and conduct of the police officers that detained and arrested the Plaintiff.

The Defendant's submissions

[74.] The Defendant submitted that the facts alleged by the Plaintiff cannot be substantiated on the balance of probabilities and, were fabricated to pursue a baseless claim. Mrs. Neely gave conflicting evidence filled with discrepancies and, therefore, was not a credible or believable witness. By contrast, all witnesses for the defence gave honest, credible and consistent evidence.

[75.] The Defendant submitted, relying on ***O'Hara v Chief Constable of the Royal Ulster Constabulary (1997) AC 286***, that the arrests complained about by the Plaintiff were not unlawful as the police officers involved were acting on information and instructions from their senior officer, Superintendent Fernander, which gave them reasonable suspicion to effect the arrests. The officers had reasonable grounds for suspecting that the Plaintiff was involved in armed robbery and was in possession of an illegal firearm. It does not matter whether that suspicion was subsequently proven correct per ***Dyburgh v Galt 1981 JC 69***. As a result, the Plaintiff's claim must fail. (The Defendant also relied upon the common law power to arrest where a breach of the peace has been, is being or is likely to be committed but it was not explained how the power arose on the facts.)

[76.] The Defendant addressed the tort of malicious prosecution and whether its requirements were met on the facts. They relied on, among other authorities, ***Wills v Voisin (1963) 6 WIR 50*** at page 57. The essence of the Defendant's submission in this regard was that the Plaintiff had not succeeded in proving that the police had no reasonable and probable cause to arrest him and he had not discharged the burden of proving malice. The Plaintiff's case is not one of malicious prosecution, however.

[77.] Counsel for the Defendant drew a parallel with ***W/Con 2305 Sweeting and the Commissioner of Police and The Attorney General v Atisha Tinker and Omar McPhee (2009) SCCivApp No. 50 of 2009*** and submitted that any prudent and cautious police officer placed in the position of the police officers here would have acted and done as they did and it would have been unreasonable for them not to do so.

[78.] The Defendant submitted that the Plaintiff's resort to ***the Constitution*** was an attempt to circumvent the ***Limitation Act*** and to prevent the Defendant's reliance on limitation. The Defendant has not run a limitation defence in these proceedings, however.

[79.] The Defendant submitted that, in any case, the right to liberty conferred by ***Article 19*** of ***the Constitution*** is not absolute and a person's liberty may be curtailed where there is reasonable suspicion that the person has committed or is about to commit a criminal offence.

[80.] The Defendant further submitted that, if there has been a breach of ***the Constitution***, pursuant to ***Article 28*** of ***the Constitution***, no constitutional relief should be awarded as the common law provides an adequate means of redress to the Plaintiff.

[81.] The Defendant submitted that this is not a case which warrants aggravated damages. The purpose of aggravated damages is punitive and it is only permissible in the three cases pronounced in ***Rookes v Bernard [1964] AC 1129*** namely: (i) oppressive, arbitrary or unconstitutional actions by the servants of government; (ii) where the defendant's conduct was "calculated" to make a profit for himself; or (iii) where a statute expressly authorizes the same. An unsuccessful plea by the defendant that a plaintiff is guilty of an offence should not lead to an aggravation of damages unless it is shown that the defendant acted *mala fide* per ***Warwick v Foulkes (1844) 12 M & W. 507***.

Findings of Fact

[82.] The outcome of this case turns to a significant extent on the credibility of the witnesses of the plaintiff and defence. I have borne in mind the guidance in the authorities cited by *Barnett CJ* (as he then was) in ***Garon Strachan-Brown v Sharon Goodman 2009/CLE/gen/01084*** (unreported, 28 August 2013) at paragraphs 24 and 25 when assessing the credibility of the witnesses in that case.

[83.] I make the following findings of fact on the admitted evidence. It will be apparent that I have generally preferred the evidence of the Defendant's witnesses where in conflict with the evidence of the Plaintiff's. That is because I found the Defendant's witnesses to be more credible than the Plaintiff's. Both the Plaintiff and Mrs. Neely appeared to have strong negative feelings towards the police and were not reliable witnesses on all matters.

[84.] Beginning first with the arrest and detention of the Plaintiff in December 2015, I find that the Plaintiff was arrested at his family home by DC Johnson at 1:35 pm on 24 December 2015 on suspicion of armed robbery and illegal possession of a firearm. Enforcer Unit #18 and several other units received instructions from Superintendent Fernander to arrest the Plaintiff on suspicion of armed robbery and illegal possession of a firearm and Enforcer Unit #18 carried out those instructions.

[85.] Enforcer Unit #18 was not briefed by Superintendent Fernander about the alleged robbery the Plaintiff was suspected of committing or what firearm was allegedly used or

in the possession of the Plaintiff. However, the officers were aware of who the Plaintiff was (i.e. an alleged gang member) and his history with the police. DC Johnson, in particular, knew that the Plaintiff was notorious to police and that he had been taken into custody for the same or similar matters in the past. DC Johnson would have believed the Plaintiff had committed the offences he was instructed to be arrested for.

[86.] Enforcer Unit #18 arrived at the Plaintiff's residence with other units where they met the Plaintiff's gate open. The Plaintiff had anticipated the police officers' arrival through an unknown source and had a blanket and pillow with him and was awaiting his arrest. He cooperated with the police. The police officers did not damage the Plaintiff's gate by beating on it with a maul or sledgehammer and did not cut the Plaintiff's barbed-wire using a barbed-wire cutter.

[87.] It has not seriously been disputed that the Plaintiff's cousin was at the Plaintiff's residence and that he was arrested by police, but there is no evidence before me that he was outside with the Plaintiff. I therefore find that police officers entered the Plaintiff's residence and questioned persons inside the home. They did not take the Plaintiff's security cameras or security footage. Nor did they search the Plaintiff's residence, as they had been instructed simply to arrest the Plaintiff.

[88.] DC Johnson searched, cautioned and arrested the Plaintiff outside of his residence. The Plaintiff was informed that he was arrested on suspicion of armed robbery and possession of an illegal firearm before he was taken to the nearest police station, where he was booked in and kept in police custody. The Plaintiff did not resist his arrest.

[89.] By 6:00 pm on 24 December 2015, the Plaintiff had been transferred to the Grove Police Station where he remained in police custody. He was kept in police custody there until the morning of 26 December 2015, when he was moved to the Central Detective Unit and released without charge at 4:30 pm. He was not mistreated while in custody but he did have to sleep on the concrete floor. He was not able to spend Christmas with his family and his family were not permitted to visit him.

[90.] It is not disputed that the Plaintiff was arrested by the police on 3 February 2016 and released from custody on 8 February 2016. The Plaintiff must have been arrested on the basis of suspicion that he committed an offence as it is admitted in his Statement of Claim that his detention was extended. However, it is not possible to say much more on the limited evidence that is now before the Court. I am not prepared to find that the Plaintiff's arrest was arbitrary or capricious. However, equally, it is not possible for me to say what precisely was in the mind of the arresting officer when the Plaintiff was arrested on 3 February 2016. Were I to surmise that similar instructions were issued by

Superintendent Fernander as were issued on 24 December 2015, that would be conjecture. I accept the Plaintiff's uncontroverted evidence that he was kept in custody in a holding cell and that he was released without charge.

[91.] The Plaintiff failed to lead adequate evidence to persuade me of the veracity of his allegations that the police damaged his gate and locks in identical ways in December 2015 and February 2016, took his security cameras and security footage in December 2015 and February 2016 and made gratuitous threats on his life. I disbelieved the uncorroborated evidence of the Plaintiff and his mother. It is trite that the more inherently unlikely it is that something has happened, the more persuasive the evidence must be.

[92.] Having made these findings of fact, I turn next to my discussion and analysis of the dispositive issues.

Discussion and analysis

Was the arrest and detention of the Plaintiff in December 2015 or the arrest and detention of the Plaintiff in February 2016 unlawful?

[93.] The law attaches "superlative importance"[2] to the "elemental" and "priceless"[3] right of an individual not to be deprived of their personal liberty. ***Article 19(1)*** of ***the Constitution*** protects every individual from the arbitrary deprivation of their personal liberty by the State. The Court "stand[s] between the subject and any attempted encroachments on [their] liberty by the executive, alert to see that any coercive action is justified in law".[4] Where a person has been arrested or detained, the Court must ensure that the requirements of the law have been scrupulously complied with.

[94.] Every imprisonment by the State is *prima facie* a breach of ***Article 19(1)*** of ***the Constitution*** which must be justified.[5] Every arrest and every imprisonment is *prima facie* tortious as well.[6] The protection conferred by the law in this regard is not, however, absolute. One of the exceptional circumstances in which a person may be deprived of their liberty under authority of law is if they are lawfully arrested on the basis that they

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[2] ***Gilford Lloyd v Superintendent Cunningham and others [2017] 2 BHS J. No. 76*** per *Charles J* (as she then was) at paragraph 33.
[3] ***Cleare v The Attorney General and others [2013] 1 BHS J No. 64*** per *Allen P* at paragraph 48.
[4] Adopting the words of *Lord Atkin* in ***Liversidge v Anderson [1942] AC 206*** at page 244.
[5] ***Ramsingh v Attorney General of [2013] 1 LRC 461*** per *Lord Clarke* at paragraph 8.
[6] ***Liversidge v. Anderson [1942] AC 206*** per *Lord Atkin* at page 245; ***Dallison v Caffery [1965] 1 QB 348*** per *Diplock LJ* (as he then was) at page 370

were reasonably suspected of having committed a criminal offence. This is the case both under ***Article 19(1)(d)*** of ***the Constitution*** and under the common law.[7]

[95.] ***Section 31(2)(a)*** of the ***Police Force Act, 2009*** permits a police officer to arrest without a warrant any person he reasonably suspects of having committed an offence. The legislation provides:

> (2) Without prejudice to the generality of the foregoing or any other provision of this Act, a police officer may, without a warrant, arrest a person –
> (a) he reasonably suspects of having committed an offence.
>
> [Emphasis added]

[96.] In ***Kevin Renaldo Collie v The Attorney General [2020] 1 BHS J. No. 59***, at paragraph 46, *Stewart J* identified the basic circumstances in which an arrest made by a police officer without a warrant pursuant to ***section 31(2)(a)*** of the ***Police Force Act, 2009*** will be unlawful:

> 46. … an arrest is unlawful if:-
> 46.1 the arresting officer has not sufficiently satisfied himself that a suspect is responsible for the commission of an offence and therefore arrests a suspect without reasonable suspicion; and/or
> 46.2 the arresting officer does not inform the suspect of the reason for his arrest as soon as practicable.

[97.] With respect to the first of the circumstances identified in ***Kevin Renaldo Collie***, the linchpin of ***section 31(2)(a)*** of the ***Police Force Act, 2009*** is the concept of "reasonable suspicion". "Reasonable suspicion" is a low threshold falling short of a *prima facie* case. It does not require evidence amounting to *prima facie* proof. In ***Parker v The Chief Constable of Essex [2019] 3 All ER 399***, *Sir Brian Leveson P* summarized the leading English authorities on the concept at paragraph 115 thusly:

> [115] I can summarise the relevant (and agreed) legal principles. The bar for reasonable cause to suspect set out in s 24(2) of the 1984 Act is a low one. It is lower than a prima facie case and far less than the evidence required to convict: Dumbell v Roberts [1944] 1 All ER 326 at 329 and Shaaban Bin Hussien v Chong Fook Kam [1969] 3 All ER 1626 at 1630–1631, [1970] AC 942 at 948–949; see also Castorina (supra) (at 21) and O'Hara [1997] 1 All ER 129 at 134, [1997] AC 286 at 293. Further, prima facie proof consists of admissible evidence, while suspicion may take account of matters that could not be put in evidence (Hussien [1969] 3 All ER 1626 at 1631, [1970] AC 942 at 949 and O'Hara [1997] 1 All ER 129 at 134, [1997] AC 286 at 293). Suspicion may be based on assertions that turn out to be wrong (O'Hara [1997] 1 All ER 129 at 139, [1997] AC 286 at 298). The factors in the mind of the arresting officer fall to be considered cumulatively (Armstrong (supra) at [19] and Buckley (supra) at [16]).
>
> [Emphasis added]

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[7] ***Antoine Justin Russell v The Attorney General and another SCCivApp No. 186*** at paragraphs 25 to 27 and ***The Commissioner of Police and another v Rod Andrew Bethel SCCivApp No. 59 of 2021*** at paragraphs 8 to 11.

[98.] While an arresting officer must have more than a suspicion of general unlawful conduct, the arresting officer need not know or be able to specify the specific details of the particular offence for which the arrest is made. It is enough that the arresting officer reasonably suspects the existence of facts amounting to an arrestable offence of a kind which he has in mind (e.g., suspicion of "involvement in kidnapping" is sufficient): ***Betaudier v Attorney General for Trinidad and Tobago [2021] 5 LRC 155*** per *Lord Lloyd-Jones* at paragraph 15.

[99.] The test for "reasonable suspicion" is both subjective and objective. The officer must genuinely suspect that the person he intends to arrest committed an offence and the officer must have reasonable grounds for that belief based on the facts known to or information given to them at the time of the arrest. In ***Jerone Thompson Sr. and others v Lynden Saunders SCCiv App No. 2 of 2023***, *Evans JA*, delivering the judgment of the Court of Appeal, said at paragraphs 41 and 42:

> 41. As stated by this Court, differently constituted, in **Antoine Russell v The Attorney General et al. SCCivApp. No. 186 of 2017**, reasonable suspicion and reasonable belief are two distinct tests. The test under 31(2)(a) of the Police Force Act is reasonable suspicion.
> 42. In **Kevin Renaldo Collie** Stewart, J. relying on the English case of **O'Hara v Chief Constable of the Royal Ulster Constabulary (1996) UKHL 6** opined that:
>
> > "44 As stated in O'Hara the test for reasonable suspicion is a simple but practical one and relates entirely to what is in the mind of the arresting officer at the time of the arrest. It is partly subjective, because the arresting officer must have formed a genuine suspicion in his own mind that the Plaintiff has been concerned with the act he is accused of. It is also partly objective, because there must also be reasonable grounds for the suspicion formed which goes no further than what was in the mind of the arresting officer at the time of the arrest."
>
> [Emphasis added]

[100.] While an arresting officer can form a reasonable suspicion a person has committed an offence based on hearsay, provided that it is reasonable and the arresting officer genuinely believes it, but an arresting officer can never be a mere "conduit" for somebody else. The learned editors of ***Blackstone's Criminal Practice 2023*** summarize the position thusly at ***paragraph D1.5***:

> Informing a reasonable suspicion a constable may rely on hearsay, provided that it is reasonable and that the constable believes it (Clarke v Chief Constable of North Wales Police [2000] All ER (D) 477). Thus a constable may arrest a person as a result of radio information, or even an anonymous telephone call, provided that the person arrested corresponds to the description in the message (King v Gardner (1979) 71 Cr App R 13; DPP v Wilson [1991] RTR 284); the constable may act on the word of an informant, although such a source should be treated with considerable reserve (James v Chief Constable of South Wales [1991] 6 CL 80). The constable may rely on an entry in the police national computer, unless in the light of all the circumstances some further inquiry is called for before suspicion can properly crystallise (Hough v Chief Constable of Staffordshire Police [2001] EWCA Civ 39); or on a briefing from another police officer (Alford v Chief Constable of Cambridgeshire [2009] EWCA Civ 100) or investigator such

as an officer from the SFO (R (Rawlinson) v Central Criminal Court [2012] EWHC 2254 (Admin), [2013] 1 WLR 1634). The arresting officer is not under a duty to check information supplied, and an arrest will be lawful even if the information was incorrect (R (Tchenguiz) v Director of the SFO [2012] EWHC 2254 (Admin), [2013] 1 WLR 1634; R (Chatwani) v NCA [2015] EWHC 1283 (Admin)). The mere fact that an arresting officer has been instructed by a superior to effect an arrest is not sufficient (O'Hara v Chief Constable of the Royal Ulster Constabulary [1997] AC 286; Olden [2007] EWCA Crim 726). A belief that a superior officer probably did have information justifying an arrest which was not conveyed to the arresting officer does not suffice (Metropolitan Police Commissioner v Raissi [2008] EWCA Civ 1237, [2009] QB 564).

[Emphasis added]

[101.] In ***O'Hara v Chief Constable of Royal Ulster Constabulary [1997] AC 286***, the House of Lords held that an order by a superior officer to a more junior officer to arrest a suspect is not, in and of itself, sufficient to afford the arresting officer a reasonable suspicion that an offence has been committed (this is sometimes known as the "***O'Hara*** principle" or the "***O'Hara*** rule"). *Lord Steyn* said at page 293:

> Given the independent responsibility and accountability of a constable under a provision such as section 12(1) of the Act of 1984 it seems to follow that the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion within the meaning of section 12(1). It is accepted, and rightly accepted, that a mere request to arrest without any further information by an equal ranking officer, or a junior officer, is incapable of amounting to reasonable grounds for the necessary suspicion. How can the badge of the superior officer, and the fact that he gave an order, make a difference? In respect of a statute vesting an independent discretion in the particular constable, and requiring him personally to have reasonable grounds for suspicion, it would be surprising if seniority made a difference. It would be contrary to the principle underlying section 12(1) which makes a constable individually responsible for the arrest and accountable in law. In Reg. v. Chief Constable of Devon and Cornwall, Ex parte Central Electricity Generating Board [1982] Q.B. 458, 474 Lawton L.J. touched on this point. He observed:
>
> > "[chief constables] cannot give an officer under command an order to do acts which can only lawfully be done if the officer himself with reasonable cause suspects that a breach of the peace has occurred or is imminently likely to occur or an arrestable offence has been committed."
>
> Such an order to arrest cannot without some further information being given to the constable be sufficient to afford the constable reasonable grounds for the necessary suspicion. That seems to me to be the legal position in respect of a provision such as section 12(1). For these reasons I regard the submission of counsel for the Chief Constable as unsound in law. In practice it follows that a constable must be given some basis for a request to arrest somebody under a provision such as section 12(1), e.g. a report from an informer.
>
> [Emphasis added]

[102.] The ***O'Hara*** principle is well-illustrated by ***Charles Mcaughey v Her Majesty's Advocate [2014] SCCR 11***, a decision of the Scottish High Court of Justiciary. In that case, a police constable had searched and detained the appellant's van after he had been told by his supervising officer that the Scottish Crime and Drug Enforcement Agency had provided

information that a vehicle was thought to be carrying drugs and money and given particulars of the appellant's vehicle. The Scottish High Court of Justiciary held that there was insufficient basis for any suspicion formed by the police constable on the facts. *Lord Glennie* said at paragraph 18:

> ...although Police Constable Thomson was given reason to know that the Scottish Crime and Drug Enforcement Agency suspected that the vehicle was carrying drugs and money, he was given no factual information on which he could form his own view. The fact that it was the Scottish Crime and Drug Enforcement Agency which was suspicious, rather than some other source, does not seem to us to advance matters at all—it simply goes to the reputation of the source of suspicion but does not add to the factual information upon which Police Constable Thomson could act.
>
> [Emphasis added]

[103.] Turning to the second of the circumstances identified in ***Kevin Renaldo Collie***, an arresting officer must in ordinary circumstances inform the person arrested of the reasons for his arrest. This is a long-established common law right the breach of which renders the arresting officer and the Crown liable for false imprisonment.[8] In addition, it is also a right which is enshrined in ***Article 19(2)*** of ***the Constitution. Article 19(2)*** provides:

> (2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal representative of his own choice and to hold private communication with him; and in the case of a person who has not attained the age of eighteen years he shall also be afforded a reasonable opportunity for communication with his parent or guardian.
>
> [Emphasis added]

[104.] In my judgment, the arrest and detention of the Plaintiff in December 2015 and the arrest and detention of the Plaintiff in February 2016 were both unlawful.

[105.] Dealing first with the arrest and detention of the Plaintiff in December 2015, the Plaintiff was arrested on 24 December 2015 after DC Johnson's unit, Enforcer Unit #18, received instructions from Superintendent Fernander to arrest him on suspicion of armed robbery and illegal possession of a firearm.

[106.] While each member of Enforcer Unit #18 maintained that they were provided "information" by Superintendent Fernander in their evidence, none of them were able to recall being provided particulars of the suspected crimes for which they were asked to arrest the Plaintiff. Superintendent Fernander himself was never called as a witness.

[107.] In ***Collie***, *Stewart J* said on the facts of that case at paragraph 47:

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[8] ***Christie v Leachinsky [1947] AC 573*** per *Viscount Simon* at page 587.

> 47 Officer Adderley testified that he was given the Plaintiff's name and his intended charge but was not given the particulars of the offence. He also testified that it was usual for the charges on a warrant to differ from the actual charges that would be laid against a suspect. I do not believe that Officer Adderley, as the arresting officer, had sufficiently satisfied himself that the Plaintiff was responsible for the offence complained of or what the complaint actually entailed when he arrested the Plaintiff. He never stated that he had any knowledge of the offence complained of, other than what was told to him. An officer with the power to deprive a private citizen of his liberty should not do so just because he is told to do so. He should exercise his powers of arrest only if his belief is based on accurate, verified information that would cause him to believe that there is a chance that the person has actually committed an offence. While the Defendant relies on the case of Ramsingh, the facts in that case differ from the Plaintiff's case. The arresting officer in Ramsingh saw the Appellant's alleged victim and was able to form the opinion that something had happened to the victim by the actions of the Appellant. However, in the Plaintiff's case the arresting officer was not given sufficient information to form a reasonable suspicion in order to arrest the Plaintiff and deprive him of his liberty.
>
> [Emphasis added]

[108.] In my view, notwithstanding that DC Johnson knew who the Plaintiff was and his history with the police, and would have been entitled to take those matters into account in assessing whether the Plaintiff had committed the offences Superintendent Fernander directed he should be arrested for,[9] DC Johnson did not have sufficient information at the time he arrested the Plaintiff to have formed a reasonable suspicion himself that the Plaintiff had committed those offences.

[109.] Turning to the arrest and detention of the Plaintiff in February 2016, the Defendant made no real attempt to justify the arrest of the Plaintiff or his subsequent detention and therefore failed to discharge the burden of justification imposed on him in relation to both.

[110.] I have found as a fact that the Plaintiff was informed of the reason for his arrest in December 2015. A similar finding is not available to me in relation to the Plaintiff's arrest in February 2016 as the Defendant led no relevant evidence. This is therefore another basis on which the Plaintiff's arrest and detention in February 2016 was unlawful.

[111.] I have found that the police did not search the Plaintiff's residence. With respect to the search of the Plaintiff's person, to which the Defendant's witnesses admitted, ***section 43*** of the ***Police Force Act, 2009*** authorizes a police officer to search an arrested person if the police officer has reasonable grounds for believing the arrested person may present a danger to himself or others, and the police had reasonable grounds to search the Plaintiff's person in this case. No violation of ***Article 21*** of ***the Constitution*** therefore arises on the facts.

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[9] In ***McArdle v Egan [1933] All ER Rep 611***, at page 614, *Lord Wright* thought that a person's "special character in this regard" "may...be some help" and "probably it is a matter which ought to be treated as having some weight, though not, perhaps, very great weight".

[112.] In the circumstances, I find that:

i) the Plaintiff's arrest at 1:35 pm on 24 December 2015 and detention to 4:30 pm on 26 December 2015 (approximately two days) was unlawful.

ii) the Plaintiff's arrest on 3 February 2016 and detention to 8 February 2016 (approximately five days) was unlawful.

iii) the Plaintiff's right not to be deprived of his personal liberty under ***Article 19(1)*** of ***the Constitution*** was breached on both occasions he was arrested and detained in police custody; and

iv) the Plaintiff's right to be informed of the reasons for his arrest and detention under ***Article 19(2)*** of ***the Constitution*** was breached on the occasion of his arrest on 3 February 2016 and detention to 8 February 2016.

If the Plaintiff was unlawfully arrested and detained, what compensation or damages should be awarded to the Plaintiff?

[113.] In ***Martin Orr v The Attorney General of the Commonwealth of The Bahamas and others 2017/CLE/gen/00983*** (unreported, 11 February 2021), I considered the approach that should be taken to the award of damages for false imprisonment and, at paragraph 52, I referred to paragraphs 47 to 49 of the decision of the Court of Appeal in the case of ***Jamal Cleare v Attorney General and others [2013] 1 BHS No. 64***, where the Court stated:

> 47 The measure of and quantum of damages for unlawful detention would, of course, depend on the nature and circumstances of each case. There can hardly be one size fits all formula for the breach of such an important constitutional right as the right to personal freedom
>
> 48 Needless to say, in our view, it would be most invidious to put a price tag or tariff on the deprivation of personal liberty. But it is undoubted that the right to personal liberty is, next to the right to life, an elemental right on which the enjoyment of most, if not all, of the other rights guaranteed in the Constitution is dependent. Personal liberty truly is priceless.
>
> 49 It is for these reasons that we are unable to support the quantum of damages of seven hundred and fifty dollars ($750.00) awarded by the learned judge; nor for that matter do we think the measure of damages of two hundred and fifty dollars ($250) per day, used to arrive at that quantum, is justified or appropriate. As we have stated, we are convinced and satisfied that Takitota did not intend to lay down a general tariff for the unlawful detention of an individual.

[114.] The availability of constitutional relief in a case involving false imprisonment is circumscribed by ***Article 28*** of ***the Constitution***, which contains a proviso that the Supreme Court is not entitled to exercise its original jurisdiction to provide redress for breaches of any of the provisions of ***Articles 16*** to ***27*** (and therefore ***Article 19***) if satisfied that "adequate means of redress" are or have been available under any other law.

[115.] More particularly, where the gravamen of the complaint is that the plaintiff was unlawfully arrested and falsely imprisoned, there must generally be special circumstances or some factor taking the case out of the norm for constitutional relief to be warranted in addition to an award of common law damages. In ***Antoine Russell v The Attorney General et al. SCCivApp. No. 186 of 2017***, *Crane-Scott JA* said at paragraphs 77 to 79:

> 77. We turn now to the issue of damages. It by no means follows from our finding that the learned judge erroneously dismissed appellant's claims that he is automatically entitled to redress in the form of damages for breach of his Article 19(1) right to personal liberty. This was made very clear in the Privy Council case of Attorney-General v. Ramanoop [2005] UKPC 15.
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> 78. Delivering the Board's decision in Ramanoop, Lord Nicholls of Birkenhead (after alluding at paragraph 23, to the proviso in Article 28 of the Bahamas Constitution which precludes the grant of constitutional redress if adequate means of redress are available) gave the following advice:
>
> > "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. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power." [Emphasis added]
>
> 79. In our judgment, the appellant's claim for compensation for breach of his Article 19(1) right to personal liberty is adequately covered by his parallel claim for damages for wrongful arrest and false imprisonment. While the arrest was unlawful, there was nothing capricious or arbitrary about the circumstances of the appellant's arrest which would make it appropriate to grant him Constitutional relief. In short, this is a proper case for the proviso to Article 28(1) of the Constitution to be invoked. In other words, we are satisfied that the evidence in this case disclosed no special feature which would justify an award of damages by way of constitutional redress for which he could not be adequately compensated in his parallel claims in tort for wrongful arrest and false imprisonment. In the circumstances, we find that the appellant's claim for an award of damages by way of constitutional redress is an abuse of the court's process and it is dismissed.
>
> [Emphasis added]

[116.] In the present case, I accept the Defendant's submission that common law damages supply an adequate remedy to the Plaintiff. There is no special feature on the facts as I have found them capable of justifying an award of constitutional relief in addition to an award of common law damages.

[117.] Turning to quantify damages for false imprisonment, damages for false imprisonment are incapable of exact estimation. In ***Thompson v Commissioner of Police [1998] QB 498***, *Woolf LJ* (as he then was) gave extensive guidance on the correct approach to be adopted which I have taken into consideration. Useful guidance has also recently been given by the Judicial Committee of the Privy Council in ***Douglas Ngumi v***

The Attorney General of The Bahamas [2023] UKPC 12, which I have also taken into consideration.

[118.] The principal heads of damage for which general damages are awarded are injury to liberty and injury to feelings. The Court must take into consideration all of the facts and circumstances of the case, including the circumstances of the detainment, the length of the detainment and the treatment by officials of the detainee while in the custody of the State. The Court must also consider the fact that the liberty of the plaintiff in question has been infringed upon illegally by agents of the State. See ***Robert Kane*** at paragraphs 80 to 83.

[119.] The requirement to take into consideration all of the facts and circumstances of the case means that the circumstances of the plaintiff must be taken into consideration as well. A person "known" to the criminal justice system will usually not be entitled to the same measure of damages as a citizen unaccustomed to such an environment, if unlawfully kept in custody for the same period of time. In ***Mohammed v The Home Office [2017] EWHC 2809 (QB)***, *Edward Pepperall QC* said at paragraph 31:

> 31. It is common ground before me that a career criminal, such as Mr Mohammed, will not suffer the same initial shock as a law-abiding citizen without any experience of the criminal justice system. Indeed, for this reason Lord Woolf M.R. reduced the award that would otherwise have been made in *Evans* where a prisoner was unlawfully detained for a further 59 days at the end of a lawful sentence of imprisonment. This approach was followed in the unusual case of *R (NAB) v. Secretary of State for the Home Department* [2011] EWHC 1191 (Admin), where Irwin J. observed, at [18], that detention had not disrupted 'an otherwise ordinary life in the community'.

[120.] Having considered the awards made in the comparator cases relied upon by the Plaintiff, which are illustrative only, and having given appropriate weight to the fact that the Plaintiff is, on both parties' evidence, no stranger to the criminal justice system, in my view, on the specific facts of this case, it is reasonable in all the circumstances to award the Plaintiff:

i) the sum of $7,500 as basic compensatory damages for the Plaintiff's arrest and detention in December 2015;

ii) the sum of $14,000 as basic compensatory damages for the Plaintiff's arrest and detention in February 2016; and

iii) the sum of $5,000 as aggravated damages to reflect the fact that the Plaintiff's arrest in February 2016 has still not been explained.

[121.] No issue of exemplary damages arises as the Plaintiff did not plead exemplary damages as required by ***Order 18, rule 8(3)*** of the ***Rules of the Supreme Court, 1978***.

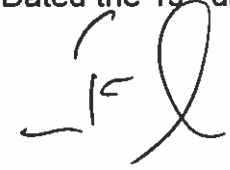
[122.] Interest is awarded pursuant to the ***Civil Procedure (Award of Interest) Act*** from the date of the Plaintiff's Statement of Claim to the date of judgment at the rate of 3% per annum and, thereafter, at the statutory rate.

[123.] As the successful party, the Plaintiff is entitled to his costs, to be taxed if not agreed

Conclusion

[124.] For the foregoing reasons, I allow the Plaintiff's claim. The Plaintiff is entitled to damages in the global sum of $26,500, comprising $21,500 in basic compensatory damages and $5,000 in aggravated damages, with interest thereon at the rate of 3% per annum from the date of the Plaintiff's Statement of Claim to the date of judgment and, thereafter, interest at the statutory rate. The Plaintiff is entitled to his costs, to be taxed if not agreed.

Dated the 19th day of September 2023



Sir Ian R. Winder
Chief Justice