

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPRME COURT  
Common Law and Equity Division  
B E T W E E N

2017/CLE/gen/01181

MATTHEW SEWELL

Plaintiff

AND

(1) THE ATTORNEY GENERAL OF THE BAHAMAS  
(2) THE MINISTER OF IMMIGRATION  
(3) THE COMMISSIONER OF POLICE  
(4) SUPERINTENDENT OF THE BAHAMAS DEPARTMENT OF  
CORRECTIONAL SERVICES  
(5) DIRECTOR OF IMMIGRATION  
(6) OFFICER IN CHARGE OF THE CARMICHAEL ROAD DETENTION CENTRE  
Defendants

**RULING ON ASSESSMENT OF DAMAGES**

**Appearances:**

Plaintiff: Mr. Fred Smith, QC  
Mr. Martin Lundy 11  
Ms. Raven Rolle  
Defendant: Ms. Kayla Greene-Smith  
Mr. Audirio Sears  
Mr. Kingsley Smith

Hearing date: 28<sup>th</sup> October 2020

*Assessment of Damages for Assault and Battery - Arbitrary Arrest and Unlawful Detention - False Imprisonment - Malicious Prosecution - Breaches Constitutional Rights under Articles 15, 17(1), 19 and 26 - Article 28 of the Constitution of The Bahamas – Damages: Special Damages -Aggravated Damages – Exemplary Damages – Vindictory and Compensatory Damages – Costs full indemnity basis.*

1. This action was commenced by a Specially Indorsed Writ of Summons filed herein on 29<sup>th</sup> September 2017; the Defence filed on 27 June 2018; and a Reply on 11<sup>th</sup> July 2018. On 30<sup>th</sup> September 2019, the Plaintiff made an application for an Interim Payment Order, and the same was granted on 27<sup>th</sup> May 2020 in the sum of \$60,000.00. The Statement of Facts and Issues was filed on 16<sup>th</sup> March 2020. Upon the Plaintiff's application for striking out for lack of compliance with the Court's Directions, the Defence herein was struck out on the 19<sup>th</sup> day of August 2020 and Judgment was entered for the Plaintiff in respect of liability on 7th September 2020. As such the Plaintiff's evidence in this case is unchallenged and accepted by the Court. The Court set 28<sup>th</sup> October 2020 for the hearing of the Assessment of Damages.

2. In providing the background to the assessment the Court takes liberty in repeating certain paragraphs of its Ruling of 27<sup>th</sup> May 2020 in the Plaintiff's application for Interim Payment. There were two Affidavits of Donneth Cartwright filed on 2<sup>nd</sup> July 2019 and 18<sup>th</sup> September 2019 which contextualized the circumstances surrounding the Plaintiff's sojourn in The Bahamas and the need for the interim payment application. In that application both sides presented submissions.
3. The relevant paragraphs of Donneth Cartwright's Affidavit recite the historical facts of the Plaintiff's stay in The Bahamas from his arrival to his final release as per an Order of the late Chief Justice, Mr. Stephen Isaacs (then Senior Justice) as a result of a Habeas Corpus application. It was noted that the Habeas Corpus application addressed the Plaintiff's detention from 2006 until October 2015. The judgment in this latter regard is very clear in saying that there was no lawful reason for his continued detention.
4. The Plaintiff's claim as per the Amended Statement of Claim was for the following:
  - i. Special Damages in the amount of \$173,970.00;*
  - ii. Damages for false imprisonment;*
  - iii. Damages for assaults and batteries;*
  - iv. Aggravated Damages;*
  - v. Damages for breaches of his fundamental rights under Articles 17, 19(1), 19(2) and 19(3) of the Constitution and as set out in Paragraph 53 [Amended Statement of Claim];*
  - vi. Exemplary and punitive damages;*
  - vii. Vindictory damages;*
  - viii. Compensation under articles 18(1) and 19(4) of the Constitution and as set out in Paragraph 53 [Amended Statement of Claim];*
  - ix. Interest on each of the foregoing pursuant to statute;*
  - x. Costs on full indemnity and solicitor and own client basis certified fit for three counsel;*
  - xi. Damages for Malicious Prosecution;*
  - xii. General Damages; and*
  - xiii. Such further or other relief as to the Court may seem fit.*

5. As per Counsel's submissions, the Court was urged to grant the following awards:

<i>i. General Damage for False Imprisonment</i>	<b>\$8,920,000.00</b>
<i>ii. General Damages for assault and battery</i>	<b>\$2,613,700.00</b>
<i>iii. Special Damages</i>	<b>\$173,970.00</b>
<i>iv. Exemplary Damages</i>	<b>\$ 5,000,000.00</b>
<i>v. Aggravated Damages</i>	<b>\$3,000,000.00</b>
<i>vi. Constitutional damages by way of compensation and vindication</i>	<b>\$5,000,000.00</b>
<i>viii. Damages for malicious prosecution</i>	<b>\$3,000,000.00</b>
<i>ix. Interest on each of the foregoing at 5% per annum from June 22, 2006 until judgment and thereafter at the statutory rate provided by the Civil Procedure (Award of Interest) Act;</i>	



6. In summary the Plaintiff's pleaded case is:

- i. **False Imprisonment:** The Plaintiff was 18 years old when he arrived in The Bahamas on 11<sup>th</sup> June 2006 (for which he was granted a visitor's stay of twenty-one (21) days) The Plaintiff was taken into police custody on 20<sup>th</sup> June 2006 on an allegation of rape of a minor. He was taken to the Quackoo Street Police Station where he claimed he was beaten, threatened, and intimidated into confessing a crime he did not commit. He further claimed that he was not cautioned when arrested and was not aware of the charges against him. He was denied a phone call to his family or lawyer, nor was the Honorary Jamaican Consul called on his behalf.

On 21<sup>st</sup> June 2006 the Plaintiff was forcefully taken to the Cable Beach Police Station where he was detained overnight and then transported to the Central Detective Unit where he was unlawfully interviewed (that is without the presence of his family, parent, lawyer or the Honorary Consul), his fingerprints taken without his permission and photographed. He was arraigned on 23<sup>rd</sup> June, 2006 on a charge of "attempted unlawful sexual intercourse". The Preliminary Inquiry was set for 25<sup>th</sup> August, 2006, bail was refused and he was remanded to the Department of Corrections (Her Majesty's Prison). He was taken to court three (3) times between 23<sup>rd</sup> June, 2006 and 4<sup>th</sup> February, 2008 and each time the matter was adjourned due to the Prosecution's unpreparedness.

The Plaintiff pleaded that his imprisonment became unlawful as his continued detention was no longer reasonable and his constitutional rights were being infringed as per Article 19(3) of the Constitution.

The matter was referred to the Supreme Court on 4<sup>th</sup> February, 2008 for trial. It was at this point that he was granted \$15,000.00 bail. As he was unable to satisfy the bail requirements he was remanded to the Department of Corrections. However, on 2<sup>nd</sup> May 2008 a renewed application for bail was made and it was granted in the sum of \$9,000.00. The Plaintiff remained in The Bahamas awaiting trial.

- ii. **Unlawful Imprisonment in 2009** – While on bail, the Plaintiff was again falsely imprisoned by the Third Defendant on 7<sup>th</sup> April, 2009. The Plaintiff maintains that officers of the Third Defendant admitted that there was no evidence against him and they did not believe he was guilty. Again, he was interviewed and imprisoned without the benefit of legal counsel. He was arraigned in the Magistrate's Court and remanded once again. The matter was adjourned to an unknown date. By 20<sup>th</sup> September, 2009 he appeared on several adjourned hearings which were occasioned by the unpreparedness of the Prosecution and for lack of appearance by the virtual complainant. He was further remanded with no trial date set or bail. Another contravention of Article 19(3) of the Constitution.

On 23<sup>rd</sup> August, 2013 the Plaintiff appeared in the Supreme Court where he made representations to the Court having been in custody for seven (7) years awaiting trial. He was granted a reduced bail of \$9,000 and remained in The Bahamas awaiting trial.

- iii. **Third Unlawful Arrest for Housebreaking and Murder allegations 2013** – While at the home of a friend, he, along with his friend, was arrested without explanation and taken to the South Beach Police Station where they were not cautioned and were denied the right to legal counsel contrary to article 19(3) of the Constitution. He was unlawfully imprisoned for seven (7) days and was then released without charges or explanation. Within days he was re-arrested and charged with house breaking and murder. The murder charges were dismissed due to his being incarcerated at the time of the incident. However, he pleaded not guilty to the housebreaking charges and was remanded to the Department of Corrections until he got bail in December, 2013. Subsequent to his several appearances in the Magistrates Court on 22<sup>nd</sup> January, 2014, 1<sup>st</sup> and 2<sup>nd</sup> March, 2014, the charges were dismissed. It was notable that the Court issued two discharge certificates to the Plaintiff but on his discharge the police officer took the certificates from him and tore them up telling him that he will “rot in jail”. He was released later that day.
- iv. **4<sup>th</sup> Unlawful arrest for Immigration purposes 2014** – 3<sup>rd</sup> April, 2014 the Plaintiff was again falsely imprisoned by the Police and the next day he was unlawfully handed over to the Carmichael Road Detention Centre without being charged with any Immigration offence. The Plaintiff claimed that these actions were in contravention of the Criminal Procedure Code Act, the Penal Code and the Constitution. On 8<sup>th</sup> and 11<sup>th</sup> August, 2014, the Plaintiff was returned to court on the earlier attempted unlawful sexual intercourse charges. He was returned to the Carmichael Road Detention Centre while still on bail. Then sometime between 11<sup>th</sup> August and 1<sup>st</sup> October, 2014 the Plaintiff was sent to the Department of Corrections because, as was related to him, “... the Detention Centre was for persons with immigration offences and he was a person with outstanding criminal charges.” Within the fortnight he was further remanded. He was taken back to the Supreme Court on 31<sup>st</sup> October, 2014 at which time, unrepresented as he was, he made out his case. The charges were dismissed and a Discharge Certificate given to the Police. Regrettably, he remained unlawfully imprisoned at the Department of Corrections.

On 3<sup>rd</sup> November, 2014 the Plaintiff was transferred once again to the Carmichael Road Detention Centre where he remained until 16<sup>th</sup> October, 2015, the date of his successful Habeas Corpus application.

- v. **Assault and Battery** – The Plaintiff claimed that from 20<sup>th</sup> June, 2006 to 3<sup>rd</sup> November, 2014, he was assaulted and battered by the agents of the Defendants in the purported execution of their duties in that he was verbally threatened, physically abused or caused to be abused and beaten by other inmates of the institution. The particulars of this claim can be found at Paragraphs 32-35 {including Particulars} of the Amended Statement of Claim.
- vii. **Malicious Prosecution** – On the two occasions noted above the charges against the Plaintiff were dismissed and he was discharged. As a result, the Plaintiff claimed that



he had always been maliciously prosecuted by the Defendants. He maintained that the prosecution had no evidence against him as it related to the offences for which he was charged. Further, and in contravention of Articles 15 and 19 of the Constitution, the Plaintiff was maliciously detained and deprived of his liberty. He was also placed on the electronic monitoring system from January, 2016 until his release on 14<sup>th</sup> July, 2017 when a nolle prosequi was entered in his favor. In all, the Plaintiff had been the subject of continued police arrests and prosecutions amounting to malicious prosecution by the Defendants. By his Particulars the Plaintiff noted that the Defendants were at all times actuated by malice as they knew that there was no or no sufficient evidence against him in respect of the charges laid, The Defendants' actions in January, 2016 were retaliatory as they were without evidence of any crime committed by the Plaintiff; and the comments of the Defendants' agents suggested that they were motivated by malice.

In concluding his claim the Plaintiff pleaded

“vii “52. In consequence of the matters aforesaid, Matthew Sewell has suffered mental anguish, depression, anxiety, injury to his reputation and a loss of his childhood dream to join the Jamaican Defence Force and become a Defence Force officer.

“53. As a result of the matters aforesaid, Matthew Sewell was deprived of his personal liberty as aforesaid and suffered [personal] injuries, sustained loss and damage”.

In addition to the many physical injuries claimed he also claimed (as per his psychiatric report) that the experience resulted in it being “A significant stressor has impacted his emotional state; disability, impairment of his mental function is being assessed. Matthew Sewell is suicidal and in need of support psychotherapy evolving to cognitive behavior therapy as anxiety symptoms abate.”

“ viii. Particulars of the Special Damages amount to \$173,970.00

7. The Amended Claim also sets out the Particulars of General Damages together with his claim for aggravated and exemplary damages for the tortious wrongs that he suffered while in the custody of the Defendants stating that his assault, battery, unlawful detention, false imprisonment, and inhumane and degrading treatment were caused by the arbitrary, oppressive and unlawful actions by Defendants' agents.
8. In support of his claim the Plaintiff relied on his witness statement of 10<sup>th</sup> March 2020. He also gave viva voce evidence by VCF to supplement his statement. This was an emotional and revealing testimony and, hopefully, a cathartic experience for him.

He also relied on

- a. The affidavit of Doneth A. Cartwright filed on 02 July, 2019.
- b. The affidavit of his father, Clive Sewell filed 21<sup>st</sup> October 2020

- c. Witness Statement of Professor Wendel Abel 10<sup>th</sup> March, 2020 and his Supplemental Witness Statement of 25<sup>th</sup> August, 2020. Professor Abel gave his evidence via VCF
  - d. Affidavit of Wislande Gefrard filed 21<sup>st</sup> October, 2020 and a Supplemental Affidavit filed on 27<sup>th</sup> October, 2020.
  - e. Affidavit of Garth Phillipe filed on 25<sup>th</sup> August, 2020.
9. Counsel for the Plaintiff asserted that the Defendants have done much to delay and obstruct the trial of this matter. The Court was amenable to accepting the stated difficulties that the Attorney General's Office had in mounting its Defence and complying with the Court's Directions. However, it came to a point where the inability of the Defendants' counsel to comply with the Court's directions and their failure to even secure a witness statement from one or the other of the Defendants left the Court no other alternative but to accede to the Plaintiff's application to strike out the Defence. Of special note for the Plaintiff was that the Defendants, during the many delays, never even offered an apology. This no doubt was reflective of the behaviour of the servants or agents of the Defendants.

#### 10. Evidence: Matthew Sewell

On 26<sup>th</sup> August 2020 the Court heard the Plaintiff's testimony, evidence in chief, about his ten-plus years of incarceration. Prior thereto (and for the purposes of trial) the Plaintiff made application to the court for the use of VCF (unchallenged) to present the viva voce evidence of Dr. Abel, Clive Sewell, and himself.

11. The Court took quick note of the appearance and deportment of the Plaintiff on the video link. He sat alone and, save for several questions put to him, he remained quietly calm as he relived his years of imprisonment. He recited the details of his several arrests, the many times he was transported to the different Magistrates and Supreme Courts and then to the Carmichael Road Detention Centre; the conditions of his prison cell and its confines; his meals or lack thereof; lack of medical treatment; physical attacks by other inmates and prison officials; verbal abuse; sexual abuse; solitary confinement; lack of family and legal contacts and many more atrocities. The Court made detailed written notes during the testimony. The Plaintiff made a courageous effort to ensure that the Court understood his sad disposition at the time. Despite his emotional and mental state the Plaintiff gave credible evidence.

12. Having confirmed his Witness Statement of 10th March 2020 the Plaintiff gave viva voce evidence:

***"... I was beat up, raped, no water, only feeding jugs, up to 6 prisoners in one cell, no bed only hard concrete, eight by eight cell with only one window and a grill door, no toilet only a bucket ( a pooping bucket used by everyone), urinated openly in jugs, outside for only one hour, no air and no light, moved from cell block to cell block for odd periods of time, there were roaches rats, centipedes and other rodents..."***



***"I had to fight to protect myself; I was moved again to the "hole"; placed with persons who were on life sentences; this was an eight by eight room with a small door; no window; dark day and night; fed dirty food and water, mostly turkey and rice once a day; had to pee in the corner and stool in a bread bag; inside for six months with no exercise; developed a weak bladder; no privileges; I was bitten by a rat; got scabies and I scratched so much it turned into a sore; slept on the cold ground; could not bathe and wore one set of clothes for months;***

***"... not allowed any visitors; went to the doctor; gave information about my location; information was to be sent to the chief; moved again to the South block; only there for two months; got into a fight because another prisoner tried to molest me; moved from dorm with 7 prisoners to 200 prisoners; no bed, no shower, open dorm; lost privileges; could not go outside; constantly in fights; moved again and housed with Jamaicans;"***

***"... beaten in my head by prison officers; prisoners beat me; at Magistrates' Court for rape charge, I was beaten and my nose broken; out in a cell where no one could see me; then waiting for the bus in a cell with fifty plus people; everyone beat me in the cell; sitting on a bunk another prisoner stabbed me in my head with a pen; there is a scar; police had to take me to the hospital because the prison officers said they could not leave; treated at hospital, had CT scan and gave me medication; slept overnight at police station; very painful; got beat up and stabbed by other inmates."***

***"... sent to the Detention Centre; not charged with an immigration offence; RBDF officers beat me; accused me of rape; punched and slapped me; in a dorm with 300 persons of different nationalities; no showers, one toilet and had to use a bucket; bathed in dirty water; slept on a piece of cardboard on the ground; in fight with a Dominican over food; got hit in my right eye and taken to Flamingo Gardens Clinic; blacked out and had to go to the Princess Margaret Hospital; can hardly see; took two months to heal; RBDF officer pulled a gun on me; told that if I didn't go by the fence he would shoot me; he hit me with his baton."***

***After release in 2015, the police arrested me for rape when I was at home with my father; police with long guns beat me again saying I was trying to bring The Bahamas Government down by suing them: charged and remanded; glass-bottle in my food; started to vomit blood had to go to the hospital found nothing; went to court and got bail and had to wear ankle bracelet,"***

13. Clive Sewell. - The evidence of Clive Sewell, the Plaintiff's father, confirmed the Plaintiff's testimony as to his claim of unlawful arrest, detention and false imprisonment. He, too, made certain that the Court understood that all efforts were made to secure the release of the Plaintiff and that he was not fully aware of the injuries and damages to the Plaintiff only that which was reported to him by the Plaintiff.

#### 14. Medical Report (Psychiatric Assessment) by Professor Abel

(i) At the time of the hearing the Plaintiff was 30 years old and had post 2017 returned to Jamaica to live. It was noted that shortly after his return to Jamaica the Plaintiff began to “show signs of decompensation” [*Decompensation refers to a person losing functionality as a result of strain or stress, usually secondary to life pressures or to a specific disorder such as schizophrenia or depression. The ability to do day-to-day tasks deteriorates, which can be the start of a vicious cycle because it increases stress and strain – Dr. Abel*]. It was reported that he was at times incoherent and eating out of garbage bins. On counsel’s advice, he was referred to a consultant psychiatrist at the University of the West Indies Hospital at Mona, Jamaica. From the credentials presented by the psychiatrist, Dr. Abel, he was well qualified to assess the Plaintiff. He is a medical professor of twenty-five years standing. He is a Consultant Psychiatrist and Professor in the Department of Community Health and Psychiatry at the University Hospital. The Court accepted Dr. Abel’s credentials as presented and read his report with great interest, especially after having heard the Plaintiff’s recount of his experiences in The Bahamas.

(ii) In his witness statements, and having confirmed the same, Dr. Abel presented a thorough report on the Plaintiff’s condition. In his report he recounted the Plaintiff’s sojourn in the Bahamas from 2000 to 2015.

At paragraphs 21 and 32 of the November, 2018 report Dr. Abel noted that

*“Paragraph 21. Mr. Sewell experiences repeated imprisonment between 2006 and 2015 and during that period he was subjected to physical, emotional and verbal abuse.*

*Paragraph 32. The repeated imprisonment over the same period (2006 - 2015) resulted in the decline in Mr. Sewell’s mental state”.*

Dr. Abel also noted from his interview with the Plaintiff that he had had a nervous breakdown shortly after his 2009 incarceration and for which he did not receive immediate care. He was eventually transferred to the Sandilands Rehabilitation Centre and was admitted on four (4) different occasions.

(iii) Dr. Abel met with the Plaintiff on several occasions (6<sup>th</sup> September 2018 to 3<sup>rd</sup> November 2018) and assessed his mental health. He noted that the Plaintiff met the **“criteria of schizophrenia and post-traumatic stress disorder”**.

(iv) At his visit on 30<sup>th</sup> November 2018 Dr. Abel observed that the Plaintiff was **“...irritable,...disorganized, ...did not verbalize ... but it was clear that he was “decompensating mentally”**. In addition to an examination of his mental state Dr. Abel visited the Plaintiff’s home in Jamaica to observe the social conditions under which the Plaintiff lived. On his visit on 1<sup>st</sup> December 2018, he was able to take photographs to illustrate the impoverished social conditions. These photographs were exhibited in his report. Dr. Abel’s recommendation -



***“It is clear that Matthew Sewell’s social condition is appalling, and he is currently decompensating. Additionally, [his] family is not coping very well.***

***It is therefore in his best interest to be placed in a group home where he will receive appropriate care and supervision.”***

- (v) In his Supplemental witness statement of 25<sup>th</sup> August, 2020 Dr. Abel gave an account of his thirteen (13) visits with the Plaintiff from 30<sup>th</sup> November 2018 to 6<sup>th</sup> July 2020. He began ***with “... Mr. Sewell meets the criteria for Schizophrenic and Posttraumatic Stress Disorder. The conditions are both chronic mental disorders, which will most likely persist throughout his life, and which will also require lifelong treatment.”***
- (vi) According to Dr. Abel the Plaintiff had no history of mental illness and had conducted a normal life before his coming to The Bahamas. It was Dr. Abel’s opinion ***“... with a reasonable degree of professional certainty that, Mr. Sewell’s illness was attributable to his experience of prolonged periods of incarceration in deplorable physical conditions, physical, emotional, sexual abuse and the harsh experience associated with solitary confinement in prison.”***
- (vii) Dr. Abel described the associated destabilizers and contributing factors to the Plaintiff’s complaint. He explained the course of the disorders and possible course of treatment. While the Plaintiff showed no signs of physical impairment, he suffered from the psychological effects of incarceration which will no doubt be long-term and which, in the Plaintiff’s words, ***“mi life mash-up”***.
- (viii) As a result of his prolonged prison ordeal the Plaintiff, according to Dr. Abel, had ***“... developed a sense of hypervigilance, interpersonal distrust, and suspicion.”*** He shared with Dr. Abel his history of threats, abuse, and torment; being beaten by other prison inmates and prison officials; and being sexually harassed and provoked by other inmates. He then developed a very violent defensive persona. His life post-incarceration was filled with fear and mistrust. The Plaintiff suffered reputational damage and personal embarrassment for his family and himself. It was known in his community that he had been arrested, imprisoned, and never convicted. He now lives with a constant stigma and suffers from discrimination.
- (ix) It was Dr. Abel’s opinion that the Plaintiff’s stay in solitary confinement compounded his disorders and directly affected his psychological well-being. Further, ***“... these disorders have and will affect the Plaintiff’s career aspirations, limit his vocational prospects, diminish his interpersonal skills and he will suffer from characteristic schizophrenic behavior. He is dependent on his family for financial support and has since been unable to maintain a sexual and intimate relationship.”***
- (x) The Plaintiff will have to maintain a steady and supervised regimen of medication and psychiatric treatments. He will require monthly treatments and assessments as

to employment fitness. The warning note was the fact that the Plaintiff may suffer periods of remission and relapses. Dr. Abel concluded that *“It is also necessary to consider the unlikelihood of Mr. Sewell being able to function independently in the community. Therefore, he will either require living in a supervised family setting or be transferred into a supervised group facility where he will have round-the-clock access to supervision and care.”*

15. Counsel referred the Court to the relevant paragraphs in the Amended Statement of Claim in which the Plaintiff pleaded that he suffered mental anguish, depression and anxiety as a result of his unlawful detention. Particulars of the injuries are set out therein. Further the Plaintiff sets out in his Amended Statement of Claim his special damages in this regard, namely:

- (i) The cost associated with his ongoing treatment with Professor Abel;
- (ii) The cost associated with his admission into a mental care facility to continue treatment as recommended by Professor Abel;
- (iii) His legal expenses, costs and disbursements; and
- (iv) His travel costs from Jamaica to The Bahamas in order to meet with his attorneys and attend the proceedings.

These costs also included his regular financial commitments (medical, rent or inpatient care at a mental facility).

16. The Amended Statement of Claim set out the Particulars of Special Damages. For the most part the special damages claimed related to legal fees paid to previous attorneys from April 2008 – July 2017. The particulars also accounted for medical assessments and treatments with Dr. Abel and securing medical reports. A replacement of a return ticket was also included. The total sum claimed was One Hundred and Seventy-three Thousand Nine Hundred and Seventy Dollars and Five Cents (B\$173,970.05). The Court is satisfied that this sum was expended by the Plaintiff or on his behalf during the course of his unlawful detention and subsequent travail in The Bahamas. As such the Court awards the Plaintiff the stated amount.

BS173,970.05

17. **Incidents of False Imprisonment:**

18.

	<b>Term</b>	<b>Days</b>
i.	June 20, 2006 – 4 <sup>th</sup> February, 2008	595
ii.	4 <sup>th</sup> February, 2008 – 2 <sup>nd</sup> May, 2008	88
iii.	7 <sup>th</sup> April, 2009 – 23 <sup>rd</sup> August, 2013	1600
iv.	2 <sup>nd</sup> October, 2013 – 8 <sup>th</sup> October, 2013	7
v.	8 <sup>th</sup> October, 2013 – 17 <sup>th</sup> October, 2013	7
vi.	17 <sup>th</sup> October, 2013 – 18 <sup>th</sup> December, 2013	65
vii.	18 <sup>th</sup> December, 2013 – 2 <sup>nd</sup> March, 2014	75
viii.	2 <sup>nd</sup> March, 2014 – 3 <sup>rd</sup> November, 2014	246
ix.	3 <sup>rd</sup> November, 2014 – 15 <sup>th</sup> October, 2015	346



TOTAL

3,568 days

19. This case is yet another in the line of claims for long periods of wrongful arrests, malicious prosecution, false imprisonment, assault and battery, and breaches of fundamental rights under the Constitution. The *leading cases* within The Bahamas for prolonged periods of detention are the case of **Atain Takitota v The Attorney General and others [2009] UKPC 11**. This has now been surpassed by the Court of Appeal decision in **Douglas Ngumi v Hon Carl Bethel et al SCCivApp No. 6 of 2021**. In a similar vein, but distinguishable, are the cases of **Merson v Cartwright and Another [2005] UKPC 38** and **Tynes v Barr (1994) 45 WIR 7**.
20. In reviewing the cases it is safe to say that the Plaintiff herein mounted the same case as was done in the Ngumi matter. The heads of damages and the amounts claimed hardly vary. At first instance Charles, J. dealt with the items giving weight to the evidence presented, the circumstances of the detention, and the method of arriving at an acceptable and consistent amount of damages having particular regard to the local settings. Notably, even on appeal the Court did not truly interfere with her findings and its modification was minimal.
21. In assessing an award for damages, the Court placed reliance on the strictures imposed in earlier cases. In **Merson v Cartwright** the Court thought it more appropriate for awards of damages to be made under the separate heads. In **Jamal Cleare v Attorney General and others [2013] 1 BHS No. 64** the Court posited that damages for false imprisonment, assault and battery are not capable of exact estimation and their assessment must of necessity be a matter of degree, based on the facts of each case. In determining the appropriate award to reflect compensation for long periods of detention the Court must consider *any incidence or element of aggravation.*’ It was as proffered in **Takitota** that “... awards as such are initially set and for longer periods the daily rate would be on a progressively reducing scale. Further, such figures are not intended to be applied in a mechanistic manner and without resort to the facts of the case or details of the detention.” [See **Takitota** at para 7 and **Alseran and others v Ministry of Defence [2019]** at paras 885 to 887.]
22. Considering the provisions of Article 28(1) of the Constitution the Plaintiff would be entitled to an award of damages for breach of his constitutional rights in addition to any award of damages for the torts suffered. In **Merson v Cartwright [1994] BHS J No. 54** at first instance Sawyer J. found that the Defendants were liable for the torts complained of and for the breaches of Merson’s several constitutional rights. The judgment was set aside on appeal to the Court of Appeal. However, on appeal to the Privy Council that judgment was reversed and Sawyer, J’s judgment was upheld allowing for an Article 28 application. The Privy Council stated:

*“Two critical issues remain for a decision on this appeal, namely, first, whether, given the provision to Article 28(1) of the Constitution, there was any room for*

*an award of damages for breach of Merson’s constitutional rights in addition to the awards of damages for the nominate torts, and, secondly, if the answer to that question is “yes”, whether the actual awards made by the learned judge involved duplication.”*

23. Reference was also made by their Lordships to another of their recent decisions in **Attorney General of Trinidad and Tobago v Ramanoo PC [2006] 1 AC**. They held that

*“the violation of the constitutional right will not always be coterminous with the cause of action at law”*. Further, their Lordships, having considered the proviso to **Article 28**, held that determining liability for breaches of constitutional rights was appropriate where *“The purpose is to vindicate the right of the complainant, whether citizen or a visitor, to carry on his or her life in The Bahamas free from unjustified executive interference, mistreatment or oppression.”*: **Merson PC para18**.

24. Given the circumstances of his arrest, malicious prosecutions, detention, treatment while detained, deprivation of his liberty, and the long and arduous journey to freedom, Sewell is well deserving of an award for vindicatory damages. The Court has considered the circumstances of Mr. Sewell’s unfortunate stay in the Bahamas and grants the following awards of damages:

#### **False Imprisonment**

25. The Court has been urged to take into account each instance of Mr. Sewell’s false imprisonment, consideration of all the facts of his detainment, the time spent and his treatment and conditions while so incarcerated. Counsel for the Plaintiff rightly brought to the Court’s attention the commentary in **Scott v AG [2017] UKPC 15 intimating** that only the Bahamian Courts can set the levels of compensation for such actions. In reviewing the several successful cases in The Bahamas [**Mackey; Tynes; Merson, Kane; Cleare; Farquharson, Lockwood; Delano; Antoine and Collie**] the Court agrees that Mr. Sewell suffered far more aggravation than those of the cases reviewed both in the length of time and nature of treatment. The behavior of the government and its agents was reprehensible. The Court can see no reason to entertain a tapering off in reducing the amount of the claim under this head. The Court is mindful of the approach adopted in **Alseran** and makes an award of damages to cover (i) the moral injury of false imprisonment; (ii) pain and suffering; (iii) loss of amenities as a result of the injuries suffered (reference to the report of Dr. Abel); injury to feelings; (iv) pecuniary loss. The length of his wrongful detention was 3568 days ... almost ten years of a man’s life.

#### **Assault and Battery**

26. Further, it was submitted that an award be set for the personal injury suffered by Sewell as a result of the continuous assault and battery he suffered at the hands of his detainers. It is suggested that the Judicial Studies Board quantifications be used as guidelines in assessing such injuries. Also Plaintiff’s counsel appealed to the Court to also consider the



commentary in **Scott** as to the applicability of such guidelines to the Bahamian situation having strict regard to the “*standards and expectations of Bahamians*”. Compensation for pain and suffering and loss of amenities has as a starting point the JSB Guidelines together with the relevant uplift. It was also proffered that consideration should be had to each instance of injury and compensation made.

27. The evidence of Mr. Sewell’s injuries is incontrovertible. Sewell suffered “instances of facial injuries, multiple facial fractures, permanent scarring to the face, leg injuries (bone infection), and serious short-term food poisoning. Sewell has also been diagnosed with Schizophrenia and Post Traumatic Stress Disorder, all caused by the long incarceration and mistreatment and which is supported by the reports of Dr. Abel.
28. Using as a guide Charles, J.’s assessment in the **Ngumi** case, the Court assesses the damages for the torts of false imprisonment, assault and battery at \$250.00 per day for 3568 days. An award of \$892,000.00. The Court adopts the caveat in respect of tapering such awards when dealing with extended lengths of unlawful imprisonment as found in **Thompson v Commissioner of Police of The Metropolis [1998] QB 498, 515**, per Lord Wolff and also found at Paragraph 89 of the **Ngumi** Supreme Court judgment [See **Ngumi v AG and others 2017/CLE/gen/1167**]. Following thereon the award is reduced by one-third making it **\$594,666,66**
29. Counsel asserted that there should be a PSLA award for each instance of injury. He enumerated eleven such instances of injuries together with the relevant periods for damages. The claim as per the tables provided set the sum of \$877,700 for damages to feelings and \$1,736,000.00 for damages for injury. Further, as submitted, the psychiatric claim should also include loss of future earnings, the continuing need for Care and supervision, and medical costs of \$25,200 annually (\$2,100.00 per month).
30. The Plaintiff complained of the terrible treatment he received while in prison but by the time he came to trial there was no medical evidence tendered to support his claim for injuries. There was only before the Court the evidence of the Plaintiff and his father. By trial, many of his injuries, if not all, had been resolved and were not visible. The Plaintiff’s attorney, however, referred to the Defendants’ lack of participation in discovery. Of greater concern was the extent and impact the whole term of false imprisonment had on him. It was a life-changing experience for him. In this regard the Court turned to the reports of Dr. Abel.
  - (i) **Post-Traumatic Stress Disorder Damage:** There was a specific diagnosis of a psychiatric disorder following his incarceration that has created a psychological trauma in response to an actual or threatened serious injury or other physical violation.

During his assessment and analysis, Dr. Abel noted that Sewell exhibited or had experienced nightmares, flashbacks, sleeplessness, and mood disorders, all symptoms of PTSD. As a result, Sewell will be permanently affected as it will

- prevent him from working at all or at least from functioning at anything approaching his pre-trauma level [B - 7.2 (a) - Post Traumatic Stress Disorder]
- (ii) **Psychiatric and Psychological Damage:** The injuries sustained by Sewell, according to Dr. Abel, will affect his ability to work and to cope with life. He will have difficulty relating or interacting with family and friends and will lack social skills. It is unknown whether continued future treatment will be successful, so his prognosis is not positive despite medical and psychiatric treatment.
  - (iii) Sewell suffered psychiatric and psychological trauma as a result of the alleged sexual abuse. The Judicial Studies Board Guidelines as to general damages for sexual abuse include an element of damages for indignity, mental suffering, humiliation, distress, or anger caused by such physical attacks [**See JSB Guidelines – Part 7.1 – Sexual and Physical Abuse**]. Consequent upon these injuries the Plaintiff will have difficulty in sustaining or maintaining personal and sexual relationships.

Using the Judicial Studies Board Guidelines at the severe levels, the Court makes a bundled award for the sum of One Hundred and Forty-four Thousand Eight Hundred and Eighty-one Dollars and Seventy-two Cents (**\$144,881.72**)

#### **Future Care**

31. In addition, Dr. Abel's assessment of and recommendation for the future care needs of the Plaintiff were evidenced by his letter of 8<sup>th</sup> July 2020. The estimated monthly cost of treatment (inclusive of medication and medication review by a psychiatrist; therapist sessions with a psychologist; vocational reorientation; supportive living in a group home for the rest of his life). The monthly cost for continued treatment is US\$2,100.00. The Plaintiff will be unable to work or help himself. Had he continued in the Jamaican army he would have had at best a full twenty-five (25) year stint as an officer. He has already spent ten (10) years incarcerated and without the prospect of working at a meaningful or well paying job. To this, a sufficient multiplier of 15 years must be applied. The award for this head is for the sum of Three Hundred and Seventy-eight Thousand Dollars (**\$378,000.00**) [**\$2,100.00/mth x 15yrs**]

#### **Malicious Prosecution**

32. Between 2006 and 2016 the Plaintiff was charged with three different counts of rape and charges of housebreaking and murder. None of these charges bore any fruit for the police prosecution. During the course of these prosecutions, the Plaintiff was arrested, beaten by officers, never informed of the charges against him, unlawfully detained without the benefit of trial as was his constitutional right and left in a prison cell without trial. Sewell's Habeas Corpus application was successful in October 2016. He witnessed two Discharge Certificates torn up before him. Later, he was arrested and subsequently charged with two counts of unlawful intercourse. He was detained for four days before his arraignment. He was beaten on arrest, berated for bringing an action against the government, and made to



endure the indignity and humiliation of yet another unwarranted arrest. A nolle prosequi was entered in July 2017 which brought his lengthy incarceration and mistreatment by agents of the government to an end.

33. Regrettably, the defendants failed to produce records of arrest and detention and other evidence necessary to properly evidence Sewell's treatment while incarcerated. There was a blatant refusal to comply with directions and to facilitate discovery. Counsel for the Plaintiff maintained throughout that the actions of the police and immigration officers were "intentional, highhanded, malicious, oppressive and unconstitutional".

34. Before his first arrest, the Plaintiff was a young 18-year-old of good character and then he found himself in unfamiliar surroundings facing incredible odds. The Court considered the damage to the Plaintiff's reputation, deprivation of liberty, the physical conditions of the prison and the Detention Centre, and the overall impact of the experience on the emotional and mental well-being of the Plaintiff. [See **Calix v Attorney General of Trinidad and Tobago [2013] UKPC 15.**] Moreover, consideration had to be given to local conditions and prevailing jurisprudence within The Bahamas.

35. The awards for malicious prosecution given in the Bahamian cases range from \$10,000.00 one hour as in the **Mackey** case to \$100,000.00 one day as in the **Tynes** case. The Court noted with great dismay the tragic and unfortunate fate of Mr. Sewell. The Plaintiff's series of malicious prosecutions were prolonged and unwarranted. He spent nearly ten years of his youthful life in the hands of uncaring Bahamian officials. **The Court awards the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) being Fifty Thousand Dollars (\$50,000.00) for each of the five times Sewell was wrongly arrested and maliciously prosecuted.**

### **Exemplary damages**

36. While **Rookes v Barnard [1964 AC 1129 at 1223, [1964] 1 All ER 801, [1972] 2 WLR 269** is the locus classicus for awards for damages under this head, consideration must be had to the line of cases recited herein. An award of exemplary damages is appropriate and fair due to the nature of Mr. Sewell's long and inhumane incarceration. An award of exemplary damages represents a castigation of the authorities' conduct and should reflect the seriousness of their actions or the lack thereof and the obvious, callous and blatant abuse of power. Mr. Sewell's ten-year saga was met with resistance from the police and immigration officers at every proceeding brought against him. Even when his Habeas Corpus application was successful, Mr. Sewell was detained further for approximately another eighteen (18) months. He was also witness to the deliberate destruction of two discharge certificates issued by two different judges. Mr. Sewell was punished arbitrarily for his audacity to assert his civil rights and continue his pursuit of freedom. The Defendants showed no interest in defending this suit.

37. Examples of exemplary damages can be found in the cases of **Merson, Tynes, Takitota, Deveaux and Ngumi**. However, Sewell's treatment was the absolute worst of the worst. Moreover, the authorities have yet to apologize or to assist him in his plight. The Court finds

that the Defendants' conduct was reprehensible and an award for exemplary damages should reflect the gravity of their mishandling of Mr. Sewell's case/s. The Court allows an award of **\$250,000.00** for exemplary damages.

### **Aggravated Damages**

38. Damages arise under this head when the Defendants' conduct can cause injury to feelings, suffering of indignities, disgrace, humiliation while in prison and on his return to his family in Jamaica, and mental anguish or suffering. Mr. Sewell's plight in The Bahamas was characterized by surviving long incarceration; his fight for freedom; conditions of his imprisonment; physical and mental abuse; loss of earnings during his incarceration; and his general human failing and deterioration. The Court also considered the reliving of this unforgettable experience when Sewell was called upon to give testimony. The court is mindful that some instances of aggravated damages have been covered under the head of exemplary damages. In this regard, the Court is mindful not to double dip and awards the sum of **\$100,000.00**.

### **Damages for Breaches of Constitutional Rights**

39. By way of his Writ the Plaintiff claims damages for breaches of his Constitutional rights under Articles 17(1), 18(1) and 19 (1) (2) (3) and (4) of The Bahamas Constitution. Counsel was careful to point out that this head of damage lent itself to double dipping especially where the complaint has been consumed under another head of damage. However, the claim herein had a special feature and damages for such breaches can be claimed where there has been an obvious and arbitrary abuse of the government's power.

40. Counsel submitted that the Plaintiff was also entitled to make a claim pursuant to Article (17(1) in addition to the earlier claims for false imprisonment, assault and battery and malicious prosecution. The Court was urged to take note of the inhumane and degrading conditions under which Sewell had to live and survive for ten years, namely, overcrowding, lack of proper toilet facilities, fresh air and exercise, solitary confinement, being shackled, falsely and maliciously prosecuted, and the resultant prolonged detention.

41. As for the breaches under Article 19(3) and (4) the government agents failed to follow the stipulated legal processes. They failed to inform him of the offences he was charged with and delayed bringing him forward for arraignment and trial and generally denied Sewell to assert his rights. Counsel said that Sewell's Constitutional rights were "... undeniably violated most egregiously." The Court, having heard Mr. Sewell's evidence, agrees with his honest narration of the events. The most recent Bahamian award was that of \$105,000.00 in the case of **Ngumi**. **To promote a fair and reasonable dispensation of justice for the Plaintiff, the Court awards the sum of Hundred and Twenty Thousand Dollars (\$120,000.00) in respect of his vindicatory and compensatory damages.**



**Interest**

42. The Court in its discretion awards interest at the statutory rate of 6.25% 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 on the sums claimed from the date of the Writ until paid.

**Costs**

43. In **Ngumi** at first instance, Charles, J. gave a well-reasoned decision denying the Plaintiff's costs on an indemnity basis. The Court of Appeal in its judgment confirmed that finding recognizing that in that instance the Judge had wide discretion when dealing with the issue of costs. The Court orders that the Defendants pay the Plaintiff his reasonable costs of this action on a party-to-party basis.

**SUMMMARY OF AWARD OF DAMAGES**

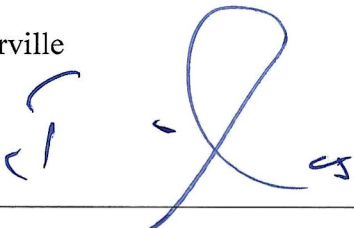
1. Special	\$173,970.00
2. False Imprisonment and Assault and Battery	\$594,666.66
3. Future Care	\$378,000.00
4. Psychiatric and Psychological	\$144,881.72
5. Malicious Prosecution	\$250,000.00
6. Exemplary	\$250,000.00
7. Aggravated	\$100,000.00
8. Damages for breach of Fundamental Rights under Article 17, 18 and 19 of the Constitution Vindictory and Compensatory	\$120,000.00
<b>TOTAL</b>	<b>\$2,011,578.38</b>

- 9. Interest
- 10. Costs

DATED THIS 2<sup>nd</sup> DAY OF August A.D., 2024

Prepared by Ruth M. L. Bowe-Darville

Delivered by:




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