

THE IN COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity
2019/CLE/gen/FP/00013

BETWEEN

DEON MORRIS

Claimant

AND

THE ATTORNEY GENERAL OF THE BAHAMAS

Defendant

Before: The Honourable Justice Mr. Andrew Forbes
Appearances: Mr. Wendell Smith Jr., appearing for the Claimant
Mr. Randolph Dames & Mr. Perry McCardy, appearing for the Defendant
Hearing Date(s): 21st March & 22nd March 2024

JUDGEMENT

[1.] This action began by way of Specially Endorsed Writ of Summons seeking the following relief: special damages, aggravated damages, exemplary damages, vindictory damages, damages for breach of constitutional rights, interest, and cost, and other relief the Court so deems. The Claimant's claim is for unlawful arrest, false imprisonment, malicious prosecution, and breach of constitutional rights. The Attorney General was sued as a representative of the Crown, as the cause of action arose from alleged actions of Officers of the Royal Bahamas Police Force.

[2.] The Court, having heard the evidence, renders its decision below.

BACKGROUND

[3.] The Claimant filed a Specially Endorsed Writ of Summons on the 4th June 2019. In paragraph 1, the Claimant asserts that he is a citizen, provides his address, and thereafter references the Defendant. At paragraph 5, the Claimant alleges that on the 23rd April at about 11 am, he was arrested, informed that the reason for his arrest was for Possession of Firearms and Ammunition, and taken to Central Police Station. The police later searched his residence for Firearms and Ammunition with negative results. At paragraph 7, the Claimant asserted that he was charged on 25 April 2015 with the following offences:

- a. Possession of Unlicensed Firearm contrary to section 5(B) of the Firearms Act;
- b. Possession of Prohibited High Powered Firearm contrary to section 30(1)(A) of the Firearms Act;
- c. Possession of Ammunition contrary to section 9(2)(A) of the Firearms Act; and
- d. Conspiracy contrary to sections 37A and 9A of the Firearms Act.

[4.] The Claimant alleged that he was taken to New Providence and arraigned before the Chief Magistrate Joyann Ferguson-Pratt, (as she then was) and remanded to the Bahamas Department of Corrections. The Claimant further alleged that there was no factual basis for the arrest and that the Defendant failed to conduct a proper investigation and was negligent. Moreover, the Defendant violated Article 17(1) of the Claimant's constitutional rights.

[5.] The particulars of the unlawful arrest were confined to paragraphs 14 through 24. In summary, the Claimant alleged that, when arrested, he was not advised of the details of his arrest. Further, the Claimant contended that he was never informed about the nature of the conspiracy and with whom he was alleged to have conspired. That the Claimant suffered mental and emotional stress, insofar as he was unable to get proper rest and sleep, and his inability to care for and interact with his family." Further, he contended that he suffered financially and was unable to secure employment because of the stigma of arrest and its publicity.

[6.] Particulars of malicious prosecution were documented in paragraphs 25 to 38; here, the Claimant asserted that he suffered damages due to the trial's commencement. He contended that the charges lasted three (3) years and were terminated in October 2018.

[7.] Particulars of negligent investigation were found at paragraphs 39 to 48, where the Claimant alleged that the failure of the Defendant to conduct further investigation resulted in his arrest and trial. The Defendant failed to have an honest belief as to the guilt of the Claimant. And could not exercise a reasonable standard of care for a competent professional. A failure to evaluate evidence according to the legal standard and charging the Claimant on mere suspicion without proof.

[8.] Particulars of Constitutional Breach commenced at paragraphs 49 and concluded at paragraph 51, in which the Claimant asserted that his constitutional rights were violated due to his arrest and detention. Finally, special damages were claimed as the legal fees owed to Shurland & Co. were Forty Thousand (\$40,000.00) Dollars. These fees are said to have been incurred due to a violation of Article 17(1) of the Constitution of the Bahamas. The Claimant was paraded in handcuffs before his young sons and others present at Camacho's auto. The Claimant's personal property was seized, and he was locked in a cell, resulting in injury to his dignity, pride, self-confidence, and reputation, for which he was denied bail for much longer than was reasonable in the circumstances, causing emotional pain and inconvenience.

[9.] In its Amended Defence filed on 18 December 2023, the Defendant denied that the Claimant was unlawfully arrested, detained and maliciously prosecuted. The Defendant averred that, on 21 April 2015, Officers were advised of a shipment arriving from New Providence and were alerted when three males approached the shipment. The officers then detained the males and searched the shipment in their presence, discovering several makes and models of Firearms and Ammunition. These males were all arrested and cautioned. The officers also confiscated the cellphone of one of these males and observed a phone conversation with another cell phone number about the alleged items seized. As a result of the information, there was a connection between the Claimant and the cellphone number through which the conversations were being relayed regarding the confiscated items.

[10.] As a result, the Claimant was arrested and interviewed. While being interviewed under caution, the Claimant admitted:

- a. That the Claimant and Garland (one of the males arrested) were co-owners of an import company which imported goods into Grand Bahama from the United States;
- b. That the Claimant and Garland were brothers-in-law;
- c. That Claimant and Garland were business partners, they communicated with each other and conducted business via cellular phones;
- d. That the Claimant admitted that police had taken his cellular phone but did not deny or admit whether he was the bearer of the phone or whether he frequently used the cellular number in question; and

- e. The Claimant denied knowledge of the firearms and ammunition when the photos of the guns were shown.

After the interview, with all the evidence, the officers were satisfied and had a reasonable belief that the Claimant should be charged.

[11.] That throughout the search of the Claimant's property, there were no illegal firearms or ammunition found. Moreover, the Claimant was not present during the arrest of Yovany Garland and others. Still, the Claimant had constructive possession with knowledge of the prohibited weapons and ammunition. The Defendant asserted that there was an existence of reasonable and probable cause that the Claimant, along with others, agreed to act together with the common purpose in committing or abetting, whether with or without concert or deliberation, conspired to import and sell illegal firearms and ammunition, which were confiscated on 21st April 2015. The Defendant further denied the allegations of damages, interest, and costs.

CLAIMANT'S EVIDENCE

[12.] The evidence of the Claimant was found in the witness statement filed on 19th October 2023 of Deon Morris, which stood as his evidence in chief. The Claimant asserted that he was arrested and detained at Central Police Station. He was later shown a search warrant for his residence and thereafter taken to his residence, where officers searched without anything illegal being found. That on the 25th April 2015 he was charged with three counts of Possession of An Unlicensed Firearm contrary to section 5(B), two counts of Possession of a Prohibited High Powered Firearm contrary to section 30(1) (A), Possession of Ammunition contrary to section 9(2) (A) and Conspiracy contrary to section 37A and 9A all of the Firearms Act Chapter 213.

[13.] According to the Claimant, he was arraigned before Chief Magistrate Ferguson Pratt (as she then was) and remanded to the Bahamas Department of Correctional Services (BDCOS). The Supreme Court later granted him bail. The case lasted three (3) years before Stipendiary and Circuit Magistrate Rengin Johnson (now retired), where the charges were not made out and he was discharged.

[14.] That the Claimant alleged that the Defendant maliciously prosecuted him and failed to carry out a proper investigation and were, as a consequence, negligent and further resulted in the breach of his Constitutional rights according to Articles 17(1) and 19(1) as a result of his detention in The Bahamas Department of Corrections (BDCOS) where he was deprived of his liberty and made to suffer inhumane and unsanitary conditions.

[15.] On cross, the evidence, in part, was as follows:

- a. That from the filing of this action to the hearing, he had not filed any financial records, both before and after his arrest;
- b. That he did not bring any evidence to substantiate his claim of financial hardship;

- c. That he did not go to a doctor or counselor to express his mental strain;
- d. That no witnesses were brought to substantiate his claim of mental strain, that he was not informed of the reason for his arrest at the time of his arrest, but was informed on the same date at Central Police Station;
- e. That officers, when executing a search warrant, did not find drugs or firearms in his home;
- f. That he knew Mr. Garland and communicated with him often;
- g. That he and Garland are in his business import license.
- h. That up to the point of his being questioned about his alleged number, he cooperated with the investigation;
- i. That he was detained at BDOCS after being charged and being brought before the Magistrate; and
- j. That he was not tortured physically.

[16.] It was suggested to the Claimant that he was not unlawfully arrested by the police, which the Claimant denied and stated that there was no reason for his arrest. It was further suggested that no constitutional right was breached; the Claimant stated it had been. Further, it indicated that the claim was, in essence, an accusation not supported by evidence. The Claimant responded that there was no evidence for him to be charged with the offenses in the first instance.

DEFENDANT EVIDENCE

[17.] The evidence of the Defendant was found in the witness statement of Waheed Bain filed on the 2nd October 2023, which stood as his evidence in chief. He indicates that at the time, he was an Inspector within the Royal Bahamas Police Force attached to the Anti-Gang/Firearms Investigation Unit. On 21st April 2015, he was a sergeant and received information regarding suspects in custody in Freeport, Grand Bahama. As a result, he and a team of officers travelled to Grand Bahama, and upon arrival, he received information regarding a search that concerned goods shipped from Nassau to Freeport via the mail boat.

[18.] The goods that were searched comprised of a Haier refrigerator and a white water cooler. That Yovany Garland, Rasheed Smith, and Sergio Humes were seen collecting the items. When the goods were searched in their presence, an assortment of firearms and ammunition were found to be concealed. These items were handed over to the firearm unit, and a profile was done on the suspects.

[19.] That on 22nd April 2015 a search was conducted of the cellular phones of Garland where several conversations and text messages were observed between Garland and a male whose number was 1(242) 553-0811 and that the conversations appeared to demonstrate that both males were conspiring, abetting and agreeing to act together to import and sell firearms and ammunition in the Bahamas. It was further observed that Garland had transmitted several photos of the guns and ammunition to the cellular number.

[20.] When further interviewing Garland, it was observed that several items had been erased from the cellular phone and could not be retrieved. However, several items were nonetheless recovered. When interviewed, Garland acknowledged that his and his sons' phones were

confiscated. He also denied the allegations or knowledge of the conversations with persons stored on his phone.

[21.] That, according to Officer Bain, they later obtained information that the cellular number 1 (242) 553-0811 was used by and connected with the Claimant. And that, acting on reasonable and probable cause, arrested the Claimant. A search was conducted of the residence of the Claimant with negative results. The Claimant was interviewed, asked several questions, and acknowledged that he knew Garland. They were family-related business partners importing goods from the United States of America (USA) into Grand Bahama. When questioned regarding the cellular number 1 (242) 553-0811, the claimant offered no comment. When pressed regarding the WhatsApp messages and photos between Garland and the number, he replied I don't recall, never denying it was his contact or the person in communication was Garland.

[22.] After further investigations on the 24th April 2015, the claimant and Five (5) others were charged. He recalls that a trial would have occurred in Freeport, Grand Bahama, with multiple adjournments.

[23.] On cross-examination, he stated, in part:

- a. That he is familiar with the Police Force Act;
- b. That he agrees that an arresting officer must have a reasonable suspicion;
- c. That he did not go personally to the telecommunication provider to ascertain the owner of the phone number 553-0811;
- d. That the evidence on the phone of Mr. Garland was erased as of 23 April 2015;
- e. That the Claimant was brought in for Possession of Firearms and Ammunition and importation; and
- f. After his investigation, he was advised by the then Office of the Attorney General (OAG) and his superior to charge the Claimant.

[24.] On re-examination, ASP Bain stated that on the 22nd April 2015, he had the phone of Mr. Garland and listened to the recordings, read messages for 2 hours, and that on the 23rd April 2015, the messages and recordings were erased.

SUBMISSIONS

[25.] Counsel for the Claimant and Defendants have laid over submissions to the Court. While those submissions will not be reproduced in detail, they have been fully considered.

[26.] Claimants' submissions are summarized as follows:

- a. The burden of proof rests with the Claimant per section 82(1), 84 of the Evidence Act;
- b. That in applying the Caribbean Civil Court Practice Third Edition and the ruling of *Mendonca JA* in **M.I.5 Investigations v Centurion Protection Agency Ltd** (Civil Appeal 244 of 2008), where a defendant fails to deny a fact according to rule 10.5(4), he cannot put a party to proof:

- c. Because of those mentioned earlier, the Defendants admit paras 6, 11, 6 11 14, 15, 16, 27, 29, 15,16,27,29,30,31,58, 31, 58. Not put to strict proof, this may be accepted as fact, but a defense was pleaded;
- d. That Officer Davis was not called as a witness, nor were any reports of his exhibited; therefore, it could not be determined what Officer Davis knew when he was arrested;
- e. That there was no evidence to prove what Asp Bain would've heard on the date in question. That the messages of Mr. Garland were erased as of the 23rd April, 2015, at 8:00 am;
- f. There was nothing to show that the cellphone was demonstrated to the Claimant;
- g. The matter was withdrawn;
- h. The onus is on the Defendant to prove that the officer at the time of arrest had reasonable grounds to arrest (see **Collie v The Attorney General** [2020]1 BHS D; **O'Hara v Chief Constable of the Royal Ulster Constabulary**);
- i. Corporal Davis was not called; there was no evidence proving that he heard the voice notes as alluded to, and he had no relevant facts.
- j. That based on those as mentioned earlier, the Claimant was unlawfully arrested/ falsely imprisoned (see **Gilford Lloyd, Chief Superintendent Cunningham** [2017] BHS J. No.76; **Stuart v Attorney General of Trinidad of Tobago** (2022) 3 UKPC 53);
- k. That malice ought to be inferred due to the lack of reasonable and probable cause; and
- l. That the Defendants have acted in an oppressive, arbitrary, and unconstitutional manner

[27.] The Defendant submits, in part:

- a. The police have the power of arrest without warrant (see section 3/(2)(a) of the Police Act, Chapter 205);
- b. That an arresting officer needs only have a reasonable suspicion at the time the arrest was made (see **Neely v The Attorney General** 2016/CLE /gen/ 00623);
- c. Arresting officers can rely on sources from their briefings and investigations (see **Alford v Chief Constable of Cambridgeshire** [2009] EWCA Civ 100);
- d. That the Claimant admits to being informed of his arrest;
- e. The search warrant demonstrated that the officers, including Officer Davis, had "reasonable cause," and
- f. He was charged after officers heard the voicemail on the phone. Of Mr. Garland;
- g. If it is found that the Claimant would have been arrested lawfully but for Officer Davis, then only nominal damages would attach (see **Parker v Chief Constable of Essex** [2019] 3 All ER 399.

ISSUES

[28.] The Court has reviewed the pleadings, such as they are, and has determined that the issues for consideration are:

- (i) Whether the Claimant was falsely imprisoned or whether the Police operated within their statutory and common law authority;
- (ii) Whether the Claimant was maliciously prosecuted;
- (iii) Whether the Claimant's constitutional rights were breached when he was arrested and detained; and
- (iv) What remedy, if any, is available?

LAW

[29.] Firstly, the Claimant asserted his right under Article 17(1) of the Bahamian Constitution was violated, and that provision reads as follows:

"17. (1) No person shall be subjected to torture or inhuman or degrading treatment or punishment....."

[30.] Further, the Claimant asserted that the Defendant breached Article 19 of the Constitution, and it is, therefore, in part, reproduced below:

19. (1) No person shall be deprived of his liberty save as may be authorized by law in any of the following cases —

- (a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;
- (b) in execution of the order of a court made to secure the fulfilment of any obligation imposed upon him by law;
- (c) for the purpose of bringing him before a court in execution of the order of a court;
- (d) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;...

[31.] Further, the Court considers the proviso in Article 28 of the Constitution relevant, and it states:

If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action concerning the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction —

- (a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and**
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:**

Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If, in any proceedings in any court established for The Bahamas other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the provisions of the said Articles 16 to 27 (inclusive), the court in which the question has arisen shall refer the question to the Supreme Court.

(4) No law shall make provision concerning rights of appeal from any determination of the Supreme Court in pursuance of this Article that is less favourable to any party thereto than the rights of appeal from determinations of the Supreme Court that are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(5) Parliament may make laws to confer upon the Supreme Court such additional or supplementary powers as may appear to be necessary or desirable for enabling the Court more effectively to exercise the jurisdiction conferred upon it by paragraph (2) of this Article and may make provision concerning the practice and procedure of the Court while exercising that jurisdiction...."

[Emphasis added.]

[32.] Moreover, the claim concerned the arresting powers of officers. Therefore, the Court refers to sections 31 and 32 of the Police Force Act, Chapter 205, which stated:

31. (1) **The members of the Force shall have all powers, authorities, privileges, advantages and immunities and be liable to such duties and responsibilities as invested with, either by common law, or under any Act now or hereafter to be in force in The Bahamas, or as may be directed and imposed by any regulations made under this Act:** Provided that if any question shall arise as to the right of any member of the Force to hold or execute his office, common reputation shall to all intents and purposes be deemed and held sufficient evidence of such right, and it shall not be necessary to produce any appointment, or any oath, affidavit or other documents or matter whatsoever to prove any qualification in support of such right.

(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;**

(b) **alleged to have committed aggravated assault in any case in which he reasonably believes that the assault has been committed although not in his presence, and that by reason of the recent commission of the offence, a warrant could not have been obtained for the apprehension of the offender;**

(c) **who commits a breach of the peace in his presence?**

(d) **who obstructs a police officer while executing his duty?**

(e) **who has escaped or attempts to escape from lawful custody;**

(f) **in whose possession anything that may reasonably be suspected to be stolen property is found or who may reasonably be suspected of having committed an offence with reference to that property;**

(g) **whom he finds in any place between the hours of eight o'clock in the evening and five o'clock in the morning, and whom the police officer suspects upon reasonable grounds of having committed or being about to commit a felony;**

(h) **found between the hours of eight o'clock in the evening and five o'clock in the morning, having in his possession, without lawful excuse, any house-breaking implement;**

(i) **for whom he has reasonable cause to believe that a warrant of arrest has been issued.**

(3) **A member of the Force shall perform such duties as the Commissioner may direct.**

(4) **Every police officer shall exercise such powers and perform such duties as are by law conferred or imposed on police officers, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from any competent authority.**

32. **Subject to section 103 of the Penal Code and without prejudice to the powers conferred upon a police officer by this Act or any other law, it shall be lawful for any police officer, and for all persons whom he shall call to his assistance, to arrest without a warrant any person who within view of any such police officer shall offend in any manner against any law and who when requested by such police officer so to do, refuses to give his name and address or gives a name and address which such officer has reason to believe is false....."**

[Emphasis added.]

[33.] Section 103 of the Penal Code states:

103. (1) **Any person may, with or without warrant or other legal process, arrest and detain another person who has committed a felony, and may, if the other person, having notice or believing that he is accused of felony, avoids arrest by resistance or flight or escapes or endeavors to escape from custody, use any force which is necessary for his arrest, detention or recapture, and may kill him, if he cannot by any means otherwise be arrested, detained or re-taken.**

(2) **Whoever is duly authorized by warrant or other legal process to arrest or detain a person for felony may, if that person has notice or believes that a warrant or other legal process is in force against him, justify any**

force which is necessary for his arrest, detention or recapture, and may kill him, if he cannot by any means otherwise be arrested, detained or re-taken, although the other person has not committed the felony, or although in fact no felony has been committed.

[Emphasis added.]

[34.] And the Criminal Procedure Code, Chapter 91 of the Statute Laws, specifically sections 15 and 18, which are relevant for these purposes and which the court will set out herein:

15. (1) Subject to the provisions of section 16 of this Code, whenever a person is arrested by a peace officer or a private person, the peace officer making the arrest or to whom the private person makes over the person arrested may search such person and place in safe custody all articles other than necessary wearing apparel found upon him: Provided that whenever the person arrested can be legally admitted to bail and bail is furnished, such person shall not be searched unless there are reasonable grounds for believing that he has about his person any —

...; or (d) other article which may furnish evidence against him regarding the offence he is alleged to have committed.

... (3) Where any property has been taken from a person under this section and such person is not charged before any court but is released because there is not sufficient reason to believe that he has committed any offence, any property taken from him under the provisions of this section shall forthwith be restored to him.

(4) An arrested person shall be furnished with a receipt for any property taken from him under this section, and the receipt shall specify that property.

18. A peace officer arresting without a warrant, in exercise of any powers conferred upon him by the Penal Code, the Police Act⁴ or any other law for the time being in force, shall, without unnecessary delay and not later than forty-eight hours after such arrest, take or send the person arrested before a magistrate appointed to preside in a magistrate's court having jurisdiction in the case, unless the person arrested be earlier released on bail by a police officer having power in that behalf under the provisions of section 32 of the Police Act

[35.] Further, the common law principles related to False Imprisonment, Malicious Prosecution, and Negligent Investigation should be discussed. Generally, when talking about 'false imprisonment,' one refers to an unlawful arrest.

[36.] A police officer who arrests a person without a warrant on reasonable suspicion of having committed a felony or arrestable offence has the burden of proving that he had reasonable cause for believing that the arrestee was guilty of the offence per **Kevin Renaldo Collie v The Attorney General** [2020] 1 BHS J. No. 59. At para 44, The court held:

44. As stated in O'Hara, the test for reasonable suspicion is a practical but straightforward test that 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 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 arresting officer's mind at the time.

45. The next step an arresting officer should take to ensure that an arrest is lawful is to ensure that the person being arrested is informed of the reason for his arrest at the first possible opportunity...

[Emphasis added.]

[37.] The explanation of reasonable suspicion is expounded on in the case of **Duran Neely v the Attorney General** 2016/CLE/gen/no 00623 at paragraph 97 as:

Reasonable suspicion is a low threshold falling short of a prima facie case. It does not require evidence amounting to a prima facie case..."

[38.] Therefore, to disprove unlawful arrest, the Defendant must prove that the arresting officer i) had a reasonable suspicion at the time of the arrest and ii) informed the individual arrested of the reason for his arrest.

[39.] In the case of **Willis v. Voisin** (1963) 6 WIR 50, *Wooding CJ* at para listed the essentials which the Plaintiff must prove to establish a case of malicious prosecution:

(a) That the law was set in motion against him on a charge of a criminal offence; (b) That he was acquitted of the charge or that otherwise it was determined in his favour; (c) That the prosecutor set the law in motion without reasonable and probable cause; and (d) That in so setting the law in motion the prosecutor was actuated by malice. Failure to establish any of these requirements will result in the plaintiff losing his action for malicious prosecution.

Further, on page 65, *McShine JA* stated:

It might be well to state that no action lies for the institution of legal proceedings, however malicious, unless they have been instituted without reasonable and probable cause. In brief, malice and reasonable and probable cause must unite to produce liability. If malice, *i.e.*, an improper motive, the onus of proof of which also rests on the plaintiff.

[Emphasis added.]

Therefore, to prove malicious prosecution, the Claimant must prove that the criminal action against him was instituted without probable cause and that there was actual malice.

[40.] The final principle for consideration is negligent investigation. The Court is aware of the tortious concept of negligence. The tort of negligence may therefore be defined as the breach of a legal duty to take care of the Claimant, which results in damage, undesired by the defendant, to the Claimant, causing some loss or injury. These are three elements to the tort of negligence described in the *locus classicus* of **Donoghue v Stevenson** [1932] AC 562: i. a duty owed by the defendant to the plaintiff; ii. Breach of that duty by the defendant; and iii. Damages to the plaintiff resulting from the breach. Moreover, the Claimants cause of action is seemingly grounded in professional negligence as they allege that the officers did not perform the investigation to the standard of a reasonable officer.

[41.] The difficulty this Court finds is that no principle in this jurisdiction is known as negligent investigation. The question for the Court is whether, when factoring in the previous sections of the Police Act, the standard of care is specific to that of a reasonable officer; whether the standard of care is limited to such obvious and grossly negligent cases, or whether officers are completely immune in the performance of their duties.

[42.] The concept of 'negligent investigation' was discussed in the Canadian and Australian courts, particularly the case of **Doe v. Board of Commissioners of Police for Municipality of Toronto** (1989) 58 DLR (4th) 396. The above case offers some insight into the concept of negligent investigations. The case concerned a woman who became a victim of a serial rapist. She sued the investigators in the matter and the Commissioner of Police for not advising the public about the small demographic of women that the serial rapist was targeting. In this instance, the targets were

single women who lived on the 2nd or 3rd story floors within a small geographic area. Nonetheless, her claim was successful as the courts held.

"[T]he police failed utterly in their duty to protect these women and [Jane Doe] in particular from the serial rapist the police knew to be in their midst by failing to warn so that they may have had the opportunity to take steps to protect themselves.

... Here, police were aware of a specific threat or risk to a particular group of women, and they did nothing to warn those women of the danger they were in, nor did they take any measures to protect them.

The court found the defendants liable and awarded a substantial sum of money in damages.

[43.] The case of Doe concerned the officers' duty to reasonably act to protect those who may fall victim to a threat. Further to that duty, in the case of **Beckstead v. Ottawa Police Services Board** (1995) 37 OR (3d) 64 (gen Div), the police were charged with a duty to perform "a careful investigation of the case" before charging an individual. The case concerned the damages claim where the plaintiff was arrested and charged with two charges for the unlawful use of a bankcard. The officers' investigation was negligent in that 1) the security footage showed a man who did not resemble the plaintiff, 2) the officers did not interview the victim, and 3) the officers charged the plaintiff before interviewing her. Though that is the stance in the Canadian and Australian courts, the view of the English Courts has not always mirrored this stance.

[44.] In the case of **Hill v. Chief Constable of West Yorkshire** [1987] UKHL 12 (which facts somewhat mirrored the case of Doe), the plaintiff's daughter was the victim of a serial killer. The serial killer made threats of harm that the officers did not make the public aware of. The court held that the liability should not be placed on the officers, as when applying the "Ann's" test (whether it would be fair, just, and reasonable to hold the defendants liable), the claim would fail. The court stated:

The general sense of public duty which motivates police forces is unlikely to be appreciably reinforced by the imposition of such liability so far as concerns their function in investigating and suppressing crime. Occasionally, they make mistakes in exercising that function, but it is not to be doubted that they apply their best endeavours to its performance. In some instances, the imposition of liability may lead to exercising a function being carried on in a detrimentally defensive frame of mind. The possibility of this happening in the investigative operations of the police cannot be excluded.

The manner of conduct of such an investigation must involve a variety of decisions to be made on matters of policy and discretion, for example, which particular line of inquiry is most advantageous to be pursued and what is the most beneficial way to deploy the available resources. Many such decisions would not be regarded by the courts as appropriate to be called into question. Yet, an elaborate investigation of the facts might be necessary to ascertain whether or not this was so. A great deal of police time, trouble, and expense might be expected to be put into the preparation of the defence to the action and the attendance of witnesses at the trial.

The court held that officers may be negligent in specific circumstances where injury may occur, however, the sentiment was that officers have a general immunity when investigating matters, and their conduct should not be impugned.

ANALYSIS

[45.] The Court, having accepted the relevant case law about unlawful arrest, makes the following ruling:

- a. In applying the cases of *Neely (supra)* and *Collie (supra)*, the Court accepts that the Claimant was informed of the reason for his arrest at the earliest convenience;
- b. However, the Defendant has not satisfied the Court that at the time of the arrest, Officer Davis held a reasonable suspicion that the Claimant had drugs and ammunition, as he was not called in either the Criminal or Civil trial to speak to his mind at the time of arrest.;
- c. The Defendant has proved that he possessed the warrant-relied-on item. Still, this warrant was admittedly executed by another officer and executed after the arrest of the Claimant. Therefore, the Court is not satisfied that Defendant has discharged its burden of satisfying the Court that the arrest was lawful.
- d. The Court also finds that the Claimant most likely would've been arrested later, as the officers saw a connection between the Claimant and others that rose above mere suspicion.

[46.] When applying the relevant requirements of malicious prosecution, the Court finds that the Claimant failed to prove that the matter was prosecuted with malice. Though the initial arrest of the Claimant was unlawful, his subsequent charge and prosecution could not be said to have been done with malicious intent. Rightly so, a lack of a *prima facie* case would amount to malice if prosecuted. Although the Claimant was charged and acquitted, the prosecutors, having set the matter, only required probable cause, which is over and above mere suspicion. The Defendant's witness asserted that the Claimant was not charged until information recovered from the search of a co-accused's cell phone showed conversations between the co-accused and the Claimant.

[47.] Further, based on the information in the conversation and further information found when investigating, the Office of the Attorney General recommended the charges and, thus, the Claimant was charged. The Court notes the comments of Dame Joan Sawyer, Chief Justice (Retired), in the case of **Kapry Kemp v. The Commissioner of Police**, MCCr. App. No. 37 of 2006 where she discussed the meaning of possession and its relation to sections 5 and 9 of the Firearms Act and noted as follows:

"For my part, I think the word "possession" as used in sections 5 and 9 of the Act means actual or constructive possession with knowledge of what the thing possessed is. It is not concerned with any particular act but rather a state of affairs, for a person may be in legal possession of property in several different countries or places simultaneously, although actually and physically resident in another, while the property or properties are in the actual control of another or others." Further in the case of **Barlette v. The Commissioner of Police & Commissioner of Police v. Barlette** MCCr. App. & CAIS No. 36 of 2015 where the Court of Appeal at paragraph 18 citing the English case of *R v. Lambert* [2001] 3 AER 577 at 598, said as follows: "It is well settled that to be in possession of a thing does not require one to be in actual physical possession of that thing. Indeed, one is in possession if the drug is in the custody of the appellant, or is subject to his control, provided he knows that the drug exists, and is in his possession."

[48.] Given that there was other evidence so that a reasonable inference could be drawn that the Claimant was in possession of the firearms, notwithstanding not being in physical custody. There was nothing put to the witness for the Defendant in cross-examination that this Court finds to amount to some malice concerning the prosecution being malicious in either its initial investigatory stage or the actual prosecution of the matter. Therefore, this claim fails.

[49.] Finally, the Claimant sought relief for negligent investigation. The Court is of the view that the current jurisprudence does not support this claim being advanced as officers have an immunity as it relates specifically to investigation and suppression of crime, and, therefore, this claim is also unsuccessful. Moreover, should the court be incorrect and ought to determine whether the officers investigating the matter acted unreasonably, it is the Court's view that the officers acted reasonably as they followed the relevant leads conducted interviews, searches and upon a recommendation made an arrest. The information received, connected the Claimant and it cannot be seen as unreasonable. Therefore, this standard was not met out either.

[50.] Finally, the Court must determine whether to invoke its supervisory power, where there is a claim for a constitutional breach. The Court notes that the Claimants rely on the same alleged facts about the unlawful arrest to seek further redress as "exemplary" and/or "vindictory" damages. In the case of **Antonio Webster (Appellant) v The Attorney General of Trinidad & Tobago (Respondent)** [2011] UKPC 22 (which concerned a tortious and constitutional claim of unlawful arrest) at para 20, *Lord Wilson* stated:

"In the present case — and irrespective of the erroneous procedure which he adopted — the appellant, by his attorney, made two decisions about how to formulate his claim: one was right and the other was wrong. The right decision was primarily to formulate his claim, unlike the claim in *Ramanoop*, as being for damages in tort.

[Emphasis added.]

[51.] When discussing 'redress' in the case of **Ramanoop v the Attorney General of Trinidad and Tobago** [2005] UKPC 15:

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but it may not suffice in principle. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right, the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it required, considering all the circumstances. Although such an award, when called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object.

[52.] The Court notes the comments taken from the headnote, in the case of **The Attorney General & The Commissioner of Police v. Rod Andrew Bethel**, SCCivApp & CAIS No.59 of 2021, where Justice of Appeal Jones says;

"The deprivation of the liberty of any person must be justified. Where a statute provides powers of arrest and detention, and the person given the powers exceeds or does not comply, they are liable to an action in trespass. Although the judge requested the appellants to produce the search warrant and statement of the complainant,

they failed to comply without any credible explanation. This entitled the judge to find unlawful arrest and false imprisonment sufficiently proved on the evidence. The judge cannot be faulted for her findings of fact here...”

[53.] This Court is not constrained as to what, if any, damages are awardable to the Claimant, given that the Court is satisfied that he was arrested unlawfully for at least three (3) hours, and the Court of Appeal in the case of **Douglas Ngumi and The Honourable Carl Bethel et al** SCCivApp. No. 6 2021 at paragraph 25 highlighted how the Court ought to apply itself when considering the question of compensation, as they said the following:

“The import of the judgment in *Takitota* was, in my judgment, best expressed in the recent decision of *Guishard*, a case emanating from the Court of Appeal of the Eastern Caribbean, delivered on the 20 October 2020, just before the delivery of the judgment in this case and for which the trial judge may not have had the benefit. In that case the court said: “**The Decision of the Board in *Takitota***

[34] In *Takitota* the Privy Council, in 2009, had to consider the correctness of an award of compensatory and exemplary damages made by the Court of Appeal of the Commonwealth of the Bahamas in favour of the claimant. The claimant was a Japanese national, who brought a claim in the High Court for damages for wrongful detention and breach of his fundamental rights under the Bahamian Constitution. This case concerned an immigration matter for which the claimant had been arrested, but had never been charged with an offence, nor was he ever brought before a court. During the long period of his detention, he had been detained in various facilities, including a maximum-security facility, and subjected to horrendous, degrading and inhumane conditions. These conditions had driven him to attempt suicide on three separate occasions.

[35] The Court of Appeal, contrary to the findings of the trial judge, found that the claimant had been unlawfully detained and incarcerated for a total of eight years and two months, for which period (2,981 days) he was entitled to be compensated in damages for unlawful detention and breach of his fundamental rights, and to a separate award for exemplary damages. Accordingly, in allowing his appeal against the quantum of damages awarded by the High Court, the Court of Appeal substituted a total award of \$BS500,000.00 (\$US500,000.00). The award of compensatory damages was arrived at using a daily rate of \$BS250.00 which resulted in the total sum of \$BS730, 500.00. This was then significantly discounted 36 upon the patently wrong and inappropriate application of the principle relating to lump sum awards in matters of compensation for personal injuries. The Bahamas Court of Appeal arrived at the base figure of \$BS250.00 by dividing the sum of \$BS1,000.00, awarded by the trial judge for ‘the initial detention and false imprisonment’, by the number of days for that period, which the Court of Appeal, as the Privy Council found, wrongly calculated as four days. They then reduced the total sum of \$BS730, 500.00 by \$BS330, 500.00 arriving at a final award of \$BS400,000.00, since the claimant would have been receiving a lump sum award. However, the Privy Council found that, on the available evidence, the initial period of detention was actually six and not four days. This erroneous calculation is what resulted in the so called daily rate of \$US250.00.

[36] **The assumption that the decision in *Takitota* is legal precedent for a daily rate of \$BS250.00 (or \$US250.00) as a benchmark for calculating compensatory damages for wrongful detention is incorrect and totally unfounded**, as a simple reading of the opinion of Lord Carswell illustrates. In fact, Lord Carswell pointed out that, on the Bahamian Court of Appeals’ approach to arriving at a daily rate (which was itself erroneous), applying the correct number of days of six as the divider, this would have resulted in a daily rate of \$BS166.66 and not \$BS250.00. It follows therefore that it is totally erroneous to rely on the daily rate of \$US250.00 as having been approved or endorsed by the Board in *Takitota*. Likewise, it would be equally unfounded to say that the Privy Council endorsed or adopted a daily rate of \$BS166.66 (\$US166.66) as an appropriate daily compensatory rate when assessing damages for false imprisonment. This is clear from the reasoning of the Board and its disposition of the appeal. The decision of the Board was to uphold only the award of \$BS100,000.00 for exemplary damages. As to the award of compensatory damages in the sum of \$BS400,000.00, the Board declined to conduct its own assessment and arrive at its own 37 award, and remitted this aspect to the Court of Appeal for reassessment. At para [16] Lord Carswell states: ‘Their Lordships accordingly consider that that part of the award made by the Court of Appeal [exemplary damages] can be upheld and should not be disturbed. They are unable, however, to regard the figure of either \$730,500

or \$400,000 by way of compensatory damages as being sufficiently securely based on the facts and the law. The Board was invited by the appellant's counsel itself to revise the amount of the award. In line with its established practice, however, it is reluctant to follow this course, for it has repeatedly expressed the view that local courts are very much better placed than the Board to say what is appropriate by way of damages, having regard to the conditions in the country concerned. Their Lordships therefore consider that that part of the award should be remitted to the Court of Appeal for reassessment.' (My emphasis.)

[37] Moreover, the Board went on to give the necessary guidance to the Bahamian Court of Appeal when conducting a reassessment of the award of compensatory damages, which includes arriving at a daily rate. At para [17] of the decision, Lord Carswell helpfully encapsulates the legal principles in these terms: 'The court should determine what they consider to be an appropriate figure to reflect compensation for the long period of wrongful detention of the appellant, taking into account any element of aggravation they think proper, reflecting the conditions of his detention and, in their own words, the misery which he endured. In assessing the proper figure for compensation for such long-term detention, they should take into account that any figure they might regard as appropriate for an initial short period, if extrapolated, should ordinarily be tapered, as their Lordships have pointed out at para [9], above. The final figure for 38 compensatory damages should therefore amount to an overall sum representing appropriate compensation for the period of over eight years' detention, taking account of the inhumane conditions and the misery and distress suffered by the appellant.'

[38] The above passage in *Takitota*, authoritatively sets out the principles which are to guide any court in this jurisdiction, including this Court, when assessing or reassessing, as the case may be, the quantum of compensatory damages to be paid or awarded to a claimant who has made out his or her claim of wrongful arrest and false imprisonment. **These principles apply to the second step in the assessment process, as the first step relates to assessing the appropriate figure to compensate for the 'the initial shock' or initial detention.** At this juncture, it would be appropriate for me to unreservedly endorse and adopt the two-step process so eloquently formulated by de la Bastide CJ (as he then was) in *McNicolls*, and by Ramdhani J in *Davis*, as set out above, both of which were relied on by the learned Master in reaching his decision on the quantum of damages under this head."

[Emphasis added.]

[54.] The case requires an analysis of the circumstances of the Claimant's arrest according to his evidence, he was taken into Police custody and held at Police Headquarters, Freeport, Grand Bahama. Though the place in question is not the most comfortable, it is not as harsh as the Bahamas Department of Correctional Services, and he was detained for three (3) hours. There was no evidence of mistreatment or abuse, and indeed, being arrested can be traumatizing in itself. The Court of Appeal in the *Ngumi case supra* at paragraph 27 cited the **New South Wales Court of Appeal decision of *Ruddock & Ors v. Taylor* [2003] NSWCA 262**, which read:

"49. Damages for false imprisonment cannot be computed on the basis that there is some applicable daily rate. A substantial proportion of the ultimate award must be given for what has been described as "the initial shock of being arrested" (*Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 at 515). As the term of imprisonment extends, the effect upon the person falsely imprisoned does progressively diminishes."

Still, in the attempts to apply the guidance offered by the Privy Council in *Takitota*, which involved an individual being unlawfully arrested and detained for eight (8) years, which is not the case in this matter, this Court considers a reasonable amount given all the known facts of One Thousand Two Hundred and Fifty Dollars, (\$1250.00) for the initial detention and a further One Thousand Dollars (\$1,000.00) for the initial shock.

[55.] In applying the aforementioned sections of the Constitution, the Court believes that the Article 28 proviso does not apply in that there is an adequate means of redress currently being sought in the form of tortious claims of negligent investigation, malicious prosecution, and unlawful arrest. Further, having regard to all the circumstances, the Court is not of the view that vindictory/exemplary damages are appropriate as the Defendant did restrict the liberty of the Claimant for all of approximately three hours (8:00 am at the time of arrest and 11:00 am at the time of the warrant being prepared.) Further, the Claimant admitted that he was not tortured physically, but has not established to the Court's satisfaction any mental injury. The Court does not find that this is an instance where redress via the channels of the Constitution is necessary, as there are other adequate forms of redress.

[56.] The Court notes that the Claimant has not provided evidence concerning either special damage or the severity of his "mental strain". Damages are not recoverable solely based on negligence; the Claimant has suffered sensations of fear or mental distress, or grief. (See **Calvey v. Chief Constable of Merseyside** [1989] 2 WLR 624), unless that shock produces some recognizable medical condition, such as heart failure or neurosis. In this case, the Claimant merely makes assertions without adducing any evidence in support, and as such, the Court finds that this claim fails. The case of **Heerlall v. Hack Bros. Construction Co. Ltd** [1977] 25 WIR 117, 124 summarizes the issue:

"Damages are special and general. Special damages must be specially pleaded and proved and are awarded in respect of out-of-pocket expenses and loss of earnings actually incurred down to the date of the trial itself. They are generally capable of substantially exact calculation or at least of being estimated with a close approximation, to an accuracy. The familiar examples are medical and surgical fees paid or payable, hospital expenses (if any), and loss of income. If the plaintiff has been employed at a fixed salary or wage, such loss of income can commonly be calculated precisely, but where he is self-employed, it must be estimated by reference to his past earnings. The basic principle as far as these losses are concerned, is that the injured person should be placed, as far as money can do so in the same financial position as he would have been in at the date of trial if no accident had happened."

DISPOSITION

[57.] The Court therefore finds that the Claimant has satisfied the claim for unlawful arrest in the first instance, as evidence demonstrates that the Defendant had no legal justification for the initial arrest, which lasted for approximately three (3) hours before the Claimant was then rearrested upon the discovery of the conversations and photographs and grants an award of \$1,250.00) for the initial detention and a further One Thousand Dollars (\$1,000.00) for the initial shock.

[58.] The Claimant failed to establish any special damages. The Claimant alleged that his former Attorney had charged him Forty Thousand Dollars (\$40,000.00); however, no evidence was adduced, and this was similar to the claims for mental anguish.

[59.] The Claimant failed to establish any additional claim, and therefore, this Court will only award compensation for the three hours of arrest and detention. No claims were substantiated for

loss of earnings, pain, or suffering. The claims related to mental anguish or legal fees were never advanced at trial, and as such, could not be given any consideration by the Court. The allegations of malicious prosecution and negligence in the investigation were never proven.

[60.] On the question of Cost, they would invite the parties to provide submissions on the question of cost to be considered.

[61.] Parties aggrieved by these findings can hereby appeal within the rules of the Court of Appeal.

Dated the 27th June, 2025

A handwritten signature in black ink, appearing to read 'A. Forbes', is written above a horizontal line.

Andrew Forbes
Justice of the Supreme Court