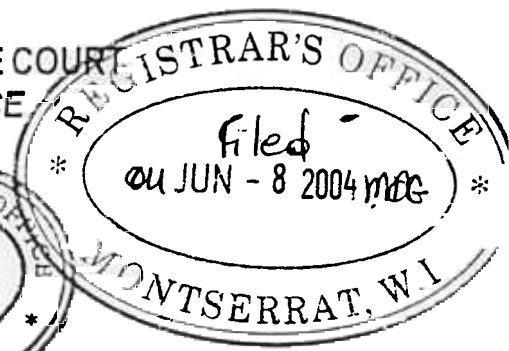


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF MONTSERRAT



SUIT NO. 15 OF 1999

BETWEEN

BERNADETTE MATHEW

Claimant

VS

THE ATTORNEY GENERAL

Defendant

APPEARANCES: Mr. Dane Hamilton for Claimant
Mr. Colin Meade for Defendant

2003: March 28

April 11

2004: June 8

JUDGMENT

Introduction

- [1] EDWARDS J: Barclays Bank in Plymouth was broken into between the 31st October 1997 and the 11th May 1998. A quantity of Eastern Caribbean Currency with approximately \$922,000.00 in face value was stolen from the Bank
- [2] The Claimant Ms. Bernadette Mathew is a Banker at the Bank of Montserrat, with more than 26 years banking experience

- [3] She was unfortunately detained and interrogated by the Police and subsequently arrested on a warrant by Sgt. Oris Sullivan on the 2nd July 1998, for offences connected with the Barclays Bank crime. She was released on bail by a Magistrate on this same day

Background Facts

- [4] The allegations against her were that she had conspired with others including her brother Clement Cassell to break into the bank, and further that she had knowingly handled a quantity of stolen Eastern Caribbean Currency between the 1st January 1998 and 31st May 1998. She was further charged with burglary at the beginning of the Preliminary Inquiry.
- [5] Between the 16th November 1998 and 7th December 1998 she stood trial with others at the Criminal Assizes for the second offence only.
- [6] Upon the prosecution offering no further evidence against her, after Sgt. Sullivan had given evidence, the Jury was directed to return a verdict of **Not Guilty** for Ms. Mathew and she was acquitted.
- [7] On the 29th March 1999, Ms. Mathew brought this action against the Attorney General for false imprisonment and malicious prosecution relating to her detention, arrest and prosecution. Sergeant Sullivan and the other Police Officers who were involved in the Criminal case against her are servants of the Crown, so the

Attorney General is the Defendant because of the relevant provisions of the Crown Proceedings Act.

- [8] Ms. Mathew has claimed damages for her wrongful detention and imprisonment, the deprivation of her liberty, injury to her credit character and reputation, her considerable suffering trouble and inconvenience, anxiety and expense, and the loss and damage she has suffered in her employment as a banker. She has also claimed exemplary damages for her arbitrary, oppressive and/or unconstitutional detention, arrest and trial, caused by the wrongful conduct of the Police.

False Imprisonment

- [9] The Police on 2 occasions interviewed Ms. Mathew after detaining her. Prior to her interview on the 26th May 1998, Inspector Arthur Lewis with 3 other Police Officers, escorted her from her workplace, the Bank of Montserrat, to her home in order to execute a search warrant. They took from her handbag currency, fixed deposit receipts, pass books, bank accounts and other documents. She went with them to the Police Station, there she was interrogated by Sgt. Sullivan about the recovered items and other things and then released. The record of the interview discloses that she was interrogated from 3:50 p.m. to 6:30 p.m. She was prevented from telephoning her brother or her Attorney at the Police Station when she wanted to

- [10] On the 25th June 1998 the Police again escorted her from her workplace to the Police Station and Sgt. Sullivan interrogated her. The interview record does not

show how long the interrogation lasted Ms. Mathew testified that she was detained for a further 3 hours after giving the statement even though she informed Sgt. Sullivan that she was feeling sick. She was released at 5:00 p.m

On the 1st July 1998 the Magistrate issued a warrant, on information sworn to by Sgt. Sullivan, for the arrest of Ms. Mathew. On the 2nd July 1998 she was arrested by Sgt. Sullivan

False imprisonment in law, is a complete deprivation of liberty for anytime however short, without lawful excuse: (Clerk and Lindsell 12th ed.552) Ms. Mathew has established a prima facie case since she has proved that her liberty was totally restrained by the Police under circumstances amounting to imprisonment. The onus therefore lies on the Defendant to prove justification for such imprisonment: (*Halsbury Laws of England* Vol. 45 para 1325).

The Police sought to justify their actions on the 2 days she was interrogated. Despite the evidence from the Police and pleadings, that Ms. Mathew agreed to accompany them to the Police Station on the 26th May and 25th June 1998, and cooperated with the interviews, it is obvious to me that she was being questioned as a suspect who might be charged depending on her answers. Ms. Mathew had no choice but to submit herself to the orders of the Police, masked as "invitations" The Police were asserting their authority over her. They travelled in her car which she drove to the Police Station, and whilst she was with them at the Police Station she was prevented from doing what she wanted to do. Ms. Mathew was detained

in law, since the police controlled her movements and the Police Station where she was, did not permit her to leave when she wanted to, and they had the ability to prevent her from leaving: (R -vs- Bournemouth Community and Mental Health NHS Trust exp.L {1988} I ALL. E.R 634)

[14] A Policeman who without formally arresting or charging a suspect, asks her to accompany him to the Police Station, has no defence to an action for false imprisonment if she went because of an assertion of authority by him Consent obtained by show of authority is no consent: (Street on Torts 4th ed page 76 citing Warner -vs- Riddiford [1858] 4 C.B.NS, 180)

[15] therefore have no difficulty in concluding that Ms. Mathew was falsely imprisoned by the Police on the 26th May and 25th June 1998

Regarding her arrest on the 2nd July 1998, this was not false imprisonment since Sgt. Sullivan having arrested her under a warrant, was performing a lawful act.

The prosecution of Ms. Mathew was commenced upon the issuing and execution of the warrant shall therefore move on now to consider the action for Malicious Prosecution

Malicious Prosecution

[18] In order to succeed on this action, Ms. Mathew has to prove on a balance of probability that she was prosecuted by servants of the Crown, that the prosecution

was determined in her favour, that the prosecution was without reasonable and probable cause and that it was malicious.

There is no debate that Ms. Mathew was prosecuted by Sgt. Sullivan and was acquitted

The issues for determination are:

- (a) Whether or not the prosecution was without reasonable or probable cause?
- (b) Whether the prosecution was malicious?

In answering the questions posed as issues, I am guided by the statement of Lord Denning in Tempest –vs- Snowden [1952] 1 K.B. 130, at page 135. Denning L.J. stated

“In my opinion in order to determine the question of reasonable and probable cause, the Judge must first find out what were the facts as known to the prosecutor, asking the Jury to determine any dispute on that matter, and then the Judge must ask himself [herself] whether those facts amounted to reasonable and probable cause”.

[22] Reasonable and probable cause has been defined as *“an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which assuming then to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person*

charged was probably guilty of the crime imputed": (PER Hawkings J in Hicks -vs- Faulkner [1878] 8 QBD 167, 171, approved by House of Lords in Herniman -vs- Smith [1938] AC. 305).

- [23] If Sgt. Sullivan can be shown to have initiated the prosecution without himself holding an honest belief in the truth of the charge, he cannot be said to have acted upon reasonable or probable cause. The question is whether Sgt. Sullivan was motivated by what presented itself to him as reasonable and probable cause. Mere belief in the truth of the charge would not protect him if the circumstances would not have led an ordinary prudent and cautious man to conclude that Ms Mathew was probably guilty: (PER Lord Radcliffe in Glinski -vs- Mc Iver [1962] A.C. 727 at pages 753 to 754)
- [24] The Defendant, while denying that the prosecution was launched and continued without reasonable and probable cause, pleaded that the Senior Magistrate's finding at the end of the Preliminary Inquiry held on the 1st August 1998 to 4th September 1998, that a prima face case was made out against Ms. Mathew, is evidence that they will rely on to establish that there was reasonable and probable cause.
- [25] The Defendant further averred that the prosecution was maintained to trial on the advice of Independent Counsel that there was a case for Claimant to answer

Though a Court may find in some circumstances that a prosecution was actuated and continued with reasonable or probable cause, where the prosecutor adduces evidence in proof of such averrements, the Defendant in the present case adduced no such evidence

Counsel Mr. Hamilton in his closing submissions focused on a very peculiar feature of this case and the implications. Sergeant Sullivan did not give evidence at this trial. The only evidence adduced came from Ag. Sgt. Charles Thomas^{ASX} and retired Insp. Arthur Lewis.

[28] Acting Sgt. Thomas^g testified that he was present at the Bank of Montserrat apparently on the 25th June 1998 and heard Sgt. Sullivan caution Ms. Mathew telling her about the report that a large quantity of money was stolen from the Barclay's Bank at Plymouth, and further, that he had reason to believe she was involved

[29] Acting Sgt. Thomas testified that Ms. Mathew was taken to the Police Station where she was interviewed by Sgt. Sullivan for more than 2 hours. Sergeant Thompson said that at the end of the interview he formed the impression that at some point the possibility existed that Ms. Mathew may have had some knowledge of the offence under investigation. He formed this impression he said, because he was aware that Ms. Mathew did regular Bank transactions on behalf of Mr. Clement Cassell during the time when the offence was alleged to have occurred.

Sergeant Thomas also admitted under cross examination that he did not have the impression, that Ms. Mathew was guilty because her brother Clement Cassell was one of the persons involved in the Bank burglary. He testified that he had no document at this point to fasten his suspicion

Inspector Lewis testified about the execution of the search warrant at Ms Mathew's home on the 26th May 1998.

[32] So this trial produced a situation where there was no evidence from Sgt. Sullivan to explain whether or not he honestly believed the facts and circumstances pointed to Ms. Mathew's guilt at the time he obtained the warrant for her arrest and executed it.

[33] The pleadings of Ms. Mathew and her evidence suggests, that Sgt. Sullivan did not honestly believe that she was guilty of the offence for which she was charged because of his failure to make enquires about what she had told him in her interviews. Ms. Mathew testified that at the second interview she had documents and receipts to establish that she was not lying about what she had told Sgt Sullivan. When she gave these documents to Sgt. Sullivan, he handed them back to her, saying that Superintendent Reddock does not want to see them. This was denied in the Defendant's pleadings.

act as both Judge and Jury in this case. In the absence of any positive evidence adduced by the Defendant to prove that disputed fact, I accept the evidence of Ms

Mathew. I find that Sgt. Sullivan ignored evidence which may have dispelled his suspicions and belief that Ms. Mathew probably was involved in the crimes under investigation

[35] In discharging her burden of proof, Ms. Mathew gave evidence tending to establish an absence of reasonable or probable cause operating on the mind of Sgt. Sullivan. She put in the Appellate record of the Evidence of Sgt. Sullivan at her criminal trial, with documentary exhibits. The exhibits included the written record of her 2 interviews with Sgt. Sullivan, the documents taken from her handbag, and the documents which were put to Sgt. Sullivan by Counsel Mr. Hamilton under cross examination, which established that she was not lying in her 2 interviews

[36] shall now examine the relevant facts that were operating on Sgt. Sullivan's mind when he launched the prosecution of Ms. Mathew.

[37] The receipts, documents, money and pass books taken from the handbag of Ms Mathew on the 26th May 1998 were handed over to Sgt. Sullivan. They included

(a) A fixed deposit certificate No. 4012080 for \$15,378.00

(b) Money US\$2,435.00 Currency including a \$50.00 note which was one of the contaminated Notes stolen from Barclays Bank.

(c) A deposit receipt for EC\$2, 000.00 made on the 3rd February 1998 to Ms. Mathew's savings account at Bank of Montserrat.

- (d) A Fixed Deposit Certificate for \$15,000.00 in Ms. Mathew's account No. 4012080 on the 13th February 1998.
- (e) A Fixed Deposit Certificate for account No. 401867-8 in the name of Ms. Mathew and her sister Rita Skerritt opened on the 19th February 1998 with US\$3,000.00.
- (f) A Deposit receipt dated 24th February 1998 for account No. 104040604 at Antigua Commercial Bank for \$5,500.00.
- (g) A Variable Term Deposit Receipt for \$9,039.08 to Ms. Mathew's account dated 13th February 1998.
- (h) Transfer of funds receipt of US\$3,000.00 (EC\$8,100.00) dated 1st May 1998 remitted by Ms. Mathew to a foreign Bank Triangle Bank for Renwick Incorporated. Ms. Mathew did this transaction for Mr. Clement Cassell her brother.
- (i) Transfer of funds receipt for EC\$2,000.00 (EC\$5,416.90) paid by Marine Midland Bank to Bennette Roach. Realty, remitted by Ms. Mathew. Mr. Bennette Roach is a brother of Ms. Mathew and Mr. Clement Cassell
- (j) Sterling Currency £1,670.00.
- (k) EC\$1,900.00.
- (l) Passbooks belonging to other persons.

[38] Ms. Mathew explained to Sgt. Sullivan in her 2 interviews about all of these documents, the transactions they represented, and the origin of the moneys she had deposited and transferred

[39] It is necessary to quote what Sgt. Sullivan had to say at the criminal trial about his reasons for prosecuting Ms. Mathew. He said under cross examination at pages 174 to 175 of the transcript of the evidence –

“ I arrested Ms. Mathew, she handled stolen property and that she conspired with others to break into Barclays Bank. It is difficult to say what sums of money I thought she handled. I had suspicions that she had handled money. These suspicions were not only based on the 2 interviews. . .I believe she was lying when she spoke about her Fixed Deposit accounts saying that she did not know how many fixed Deposits she had and what was the balance at the Bank of Montserrat. Also when she was asked about her last deposit on each of the accounts. I also believe she lied about her sister from Grenada sending her US\$3,000.00. Also when she said that she didn't know what she paid Renwick Incorporated for. And when she spoke about monies accumulated by her. . .and also when she spoke of her contingency. . .when the search was carried out, a number of bank books were found in her possession. She did explain that she assisted a number of persons by doing their banking. . .(My emphasis).

Ms. Mathew was also found with £1,670.00. She gave an explanation as to how she came in possession of this sterling. I did not believe her. She said that £670.00 belonged to Bennette Roach and she

bought it in St. Vincent. . .She also said that the balance of £1,000.00 was accumulated by her as her contingency money. To my knowledge Roach was given back the £670.00 but not by me. During the height of the volcanic crises at some point in time I kept contingency funds. At some time I had U.S. Currency. US\$2,435.000 was found in Ms. Mathew's handbag. Notes were made when the items were taken from her, don't know if the serial numbers were recorded. [Is shown document]. This appears to be a copy of the note that was taken. I see one serial number on it of one \$50.00 out of the \$2,435.00. She did say that she had one of the "contaminated" Notes in her possession. The contaminated money was widely in circulation in Montserrat. got some too. The \$2,435.00 found with Ms. Mathew could have been proceeds even though they don't fit within the serial numbers. I know Ms. Mathew was a senior supervisor of a Bank. I did not make enquiries at the Bank as to whether she was changing or exchanging notes at the Bank. would not agree that there is no basis for my belief".

- [40] Sergeant Sullivan did not explain why he believed Ms. Mathew was lying to him in her interviews. Even if he honestly believed she was guilty, an "Honest belief in guilt is no justification for a prosecution if there is nothing to found it on". (Per Denning L. J. in Glinski -vs- Mc. Iver at page 759)

An ordinarily prudent and cautious man placed in the position of Sgt. Sullivan would have carried out investigations at the Bank of Montserrat relating to the various questioned accounts and documents of Ms. Mathew, to ground his suspicions and belief that Ms. Mathew was lying to him. Had Sgt. Sullivan not been selective in his investigations, he may have concluded as a reasonable man that he did not have any substantial information pointing to the guilt of Ms. Mathew.

Moreover, the documents Ms. Mathew gave him and which would have helped him to assess the reasonableness of his beliefs were rejected by Sgt. Sullivan. His beliefs were obviously based on very flimsy and inadequate grounds.

At the Criminal Trial Counsel Mr. Hamilton put before Sgt. Sullivan all of the documents which he had ignored, and or were available from the Bank of Montserrat records, had he properly investigated the matter.

Sergeant Sullivan was forced to admit in substance that these documents did in fact show that Ms. Mathew was not a party to the crimes for which she was prosecuted and tried.

Despite the defence pleaded, Counsel for the Attorney General filed no witness statements, disclosed and or tendered no documentary evidence, and called no witness to prove what was pleaded.

circumstances without more, could not reasonably lead any ordinarily prudent and cautious person, placed in Sgt. Sullivan's position, to conclude that Ms. Mathew was probably guilty of conspiracy to break into the Barclay's Bank, burglary and knowingly handling stolen Eastern Caribbean Currency

It seems clear to me that the suspicion of Sgt. Sullivan was substituted as evidence against Ms. Mathew. It is not justifiable to commence a prosecution on mere suspicion (Clerk and Lindsell on Torts, 12th ed para 1715 citing Meering -vs- Graham White Aviation Company [1919] 122 L.T. 44, 56 as authority for the proposition).

In light of the facts and circumstances existing on the 1st June 1998, it was a remarkable decision in my view to prosecute Ms. Mathew, a person with then over 20 years banking experience, and whose character was unblemished conclude therefore that there was no reasonable or probable cause for her prosecution

Malice

[53] "Malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved, either by showing what the motive was and that it was wrong, or by showing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecution": (PER Cave J in the Divisional Court in Brown -vs- Hawkes [1891] 2QB. 718 at page 722) The state of Sgt. Sullivan's belief is an important consideration on the issue of malice

Counsel Mr. Hamilton quite rightly argued, that Sgt. Sullivan's refusal to examine the documents that Ms. Mathew handed him is relevant when considering whether the Police Officers honestly believed in her guilt

On the other hand, Mr. Mead submitted that the honest belief in the guilt of Ms Mathew was reasonable and based on a proper assessment of the facts available at the time

[56] In the absence of any tangible testimony from Sgt. Sullivan at this trial regarding what he honestly believed, the question is whether or not he acted too hastily or over-zealously, and failed to ascertain by making enquiries, facts that would have altered his opinion regarding the guilt of Ms. Mathew.

[57] It was recognized by Viscount Simmons in Glinski -v- Mc. Iver that it is not possible to generalize in answering this question. I am enjoined to bear in mind "that it is the duty of a prosecutor to find out not whether there is a possible defence, but whether there is a reasonable and probable cause": ([1962] A.C at 745)

[58] The decision in Abrath -vs- North-Eastern Railway has been identified as the authority for saying that neglect to make reasonable use of the sources of information available before instituting proceedings is evidence of want of reasonable or probable cause, and also malice: ([1886] 11 App. Cas. 247 – *Clerk and Lindsell on Torts* at para 1713).

- (a) The arrest warrant and the indictment counts relate to stolen Eastern Caribbean Currency and not foreign currency;
- (b) Sergeant Sullivan failed to identify any specific sums of the stolen money he thought Ms. Mathew had knowingly handled
- (c) He could not demonstrate even one lie that Ms. Mathew had told him in her interviews;
- (d) Sergeant Sullivan paid no attention to Ms Mathew's persistent claims to innocence or her cooperation in the investigations
- (e) He obviously never considered her veracity concerning the money, her accounts, the passbooks and other documents she had in her possession.
- (f) He connected Ms. Mathew with the offences because of the transfers she had done for, and her relationship with Clement Cassell.
- (g) Although the Antigua Commercial Bank and the Bank of Montserrat Records would have disclosed and verified the true character of Ms. Mathew's questioned deposits, transfers and other transactions, Sgt. Sullivan failed to obtain the relevant information or make adequate inquiries prior to prosecuting her.

am not suggesting that Sgt. Sullivan should have carried out investigations to prove her innocence. That is not his function. But he had a duty to carry out investigations as the circumstances demanded. He should have acted on the assumption that his prima facie suspicions may have been ill founded

Instead he portrayed himself to be an indifferent arrester and prosecutor who shut his eyes and ears to the obvious. He proceeded to arrest and prosecute her based on his whimsical ill founded suspicions

[62] In my opinion, the compelling inference to draw from the absence of reasonable or probable cause, and these facts, is that the prosecution of Ms. Mathew was malicious.

Damages

[63] Ms. Mathew has claimed special damages being \$36,909.00 for legal fees and \$600.00 for medical expenses. She has proved the legal fees but not the medical expenses.

[64] Regarding her claim for general damages (mentioned at paragraph 8 of this Judgment), the following unchallenged supporting testimony was given

[65] On the 3 occasions that the police escorted her from her Bank to execute the search warrant, and either interrogate or arrest her, they did this in full view of staff

members and staring customers. On the 2nd July when she was arrested, the police took her away from the bank premises in a police vehicle.

[66] She was embarrassed, inconvenienced and suffered discomfort on these occasions. The bail conditions imposed required her to surrender her passport and other travel documents. She was unable to travel temporarily abroad for more than 5 months.

[67] The Court house was packed daily throughout her trial from the 11th November to the 7th December 1998. She sat in the dock in shame, and people whispered about her whenever she went in public places, since Montserrat is a small place.

Her religious enjoyment was severely curtailed, as she was stopped from performing her lay reading functions, and other duties as Parish Council Member at the Roman Catholic Church, which she had been carrying out for the past 25 years. She was restored to performing those duties after she was acquitted.

She was suspended from work with ½ pay from the 2nd July 1998 to January 1999. She was financially embarrassed during the period and her relative and a friend had to assist her financially. She subsequently received the rest of her salary for the period after acquittal.

She cried a lot, lost a lot of weight and was extremely embarrassed because of the position she had held at the bank. She believed that people were avoiding her.

Upon her acquittal, her Bank Manager objected to her resuming work. It was only after a meeting with the Board of Directors and herself and her lawyer, that she was reinstated.

On resumption at work, she had no designated post, and though she was receiving the same salary as a Supervisor of Operations, she was stripped of her signing authority and relegated to beginner status. All she was allowed to do was write up vouchers and do Bank reconciliations.

[73] Whereas, in December 1997 she was recognized for her exemplary performance by the Board of Directors with an honorarium award of \$5,500.00, in 1999 she was the only person who did not get an increase in salary. The Manager resented her presence as he felt she had tarnished the image of the Bank she said.

[74] Since 2001, she had been fully restored to her original position as Senior Supervisor of Loans and Investments. She was receiving at the time of trial in 2003 a monthly salary of \$3,500.00 NET.

[75] Ms. Mathew believes that her prospects for further advancement at the Bank are hamstrung because of her unfortunate arrest and prosecution.

[76] The reputation of Ms. Mathew has been severely damaged as a result of her arrest and indictment and the Court must strive to compensate her for the loss of this reputation when considering an award for Malicious Prosecution. should

also include a sum for her intense grief, mental suffering, embarrassment and loss of liberty that she encountered for the 5 months after her arrest.

The Damages recoverable for false imprisonment and/or malicious prosecution may include exemplary damages for the oppressive, arbitrary conduct of the police regardless of whether there is additional oppressive behaviour: (Holden –vs- Chief Constable of Lancashire [1987] IQ.B. 380)

In assessing Exemplary damages, I am entitled to take into account the aggravating conduct of the prosecutor in pursuing the prosecution despite the absence of evidence against Ms. Mathew.

[79] Since the liberty of Ms. Mathew was interfered with for approximately 7 hours when she was detained by the Police for interrogation, the damages recoverable for the false imprisonment should also include a substantial sum for the embarrassment discomfort and inconvenience she suffered.

[80] Counsel Mr. Hamilton provided the Court with several authorities, 2 of which found useful in dealing with the assessment of damages. I am grateful to him for his assistance.

[81] An award of \$1,000.00 as nominal damages for wrongful arrest, and \$20,000.00 for exemplary damages, was made to a prominent respected citizen, with an unblemished reputation, who was severely manhandled humiliated and ridiculed.

and unlawfully arrested for 3 hours by the police, with widespread publicity of his arrest: (Elihu Rhymer –vs- Commissioner of Police, Arthur James and Jeremiah Clarke Civil Appeal No. 13 of 1997 British Virgin Islands, Singh J.A

Taking into account the fact that Ms. Mathew was not manhandled humiliated or ridiculed, and she spent 7 hours in detention, assess damages in the sum of \$2,000.00 as nominal damages for false imprisonment and \$16,000.00 for exemplary damages

It was recognized by Sawyer J. in Tynes –vs- Barr that the tort of defamation and malicious prosecution are similar in the effect they have on a person's reputation and the difficulty in knowing how far the false accusation has spread: ([1994] 45 WIR 7 at 25 para d)

[84] This was a case in which a lawyer in the Bahamas brought an action for the torts of assault, false imprisonment and malicious prosecution as well as breach of his constitutional rights. On the 9th day of trial the Defendants' Counsel conceded that the 4 elements necessary to prove the tort of malicious prosecution had been established. The charges of trespassing in a restricted area of the airport and failing to move were made against the lawyer by the Defendant, in order to justify the wrongful arrest of the lawyer. He had been handcuffed, violently assaulted and beaten in public view, strip searched among other things and later released after spending about 2 hours in police custody.

[85] Sawyer J. assessed the damages for malicious prosecution on the basis of compensatory damages coupled with exemplary damages. The Court found significant, the fact that the lawyer's circumstances of arrest and damage to his public image were very humiliating, as his arrest appeared on the front page of both newspapers in the Bahamas. One newspaper had reported the lawyer's arrest next to a headline about a major drug haul. While he was subject to the charges, the lawyer would have found it incongruous to defend persons charged with criminal offences when he himself was an accused on bail.

The Damages for malicious prosecution were assessed in the sum of \$100,000.00.

[87] The effects of Ms. Mathew's prosecution bear some similarities to the effect Mr. Tyne's prosecution had on him, though varying in degree and facts.

Making the necessary adjustments, and bearing in mind the particular circumstances in this instant case, in my view a sum of \$60,000.00 is appropriate for compensatory damage and exemplary changes for malicious prosecution.


Conclusion

[89] I therefore enter Judgment for the Claimant in the sum of \$36,909.00, for Special Damages \$18,000.00 for false imprisonment and \$60,000 for Malicious Prosecution.

Cmt vD

[90] The prescribed costs under Part 65.5 Appendix B of the Criminal Procedure Rules 2000 is \$26, 250.00.

[91] There will be interest on the judgment debt at the statutory rate of interest from the date of Judgment until full payment.


OLA MAE EDWARDS
High Court Judge

Dated this day the 1st day of June, 2004