

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
A.D. 2022**

CLAIM NO. NEVHCV2021/0167

BETWEEN

Shivraj Somwaru

Claimant

And

**The Attorney General of St
Christopher and Nevis**

Defendant

BEFORE: **His Lordship, the Honourable Justice Patrick Thompson Jr.**

APPEARANCES: Mr. Eustace Nisbett of counsel for the Claimant
Ms. Rivi Lake of counsel for the Defendant

2023 : May, 18th
July, 10th & 26th
December 4th

JUDGMENT

- 1) **Thompson Jr J:** Everyone agrees that on Saturday July 14, 2021, the Claimant, his fiancée (Hansrajie Persram), Carlyle Clarke ("CJ"), David Davis, Sgt Marvin Payne, and a Cpl. Royston Isaac were all at Fountain, St James, Nevis. Both sides are agreed that a decrepit BMW X3 vehicle belonging to CJ was parked on the side of the road at Fountain. They do not agree about who said and did what while the parties were at Fountain, but they all agree that as a result of the varying conversations at Fountain that day, Mr. Davis and the Claimant went to the Newcastle Police Station. Whether Mr. Davis and the Claimant did so of their own free will or were under arrest by the Police was an issue at the trial of this matter.
- 2) The Claimant and Defendant agree that Mr. Davis and the Claimant were placed into cells at the Newcastle Police Station and were kept there until they were released later that evening. The Claimant says that while he was in the cell at Newcastle Police Station, he was assaulted by a police officer who hit him with a baton on his thigh. The Defendant says nothing of the sort

happened and their case was that while the officer entered the Claimant's cell he did not strike or threaten him in any way.

- 3) The Claimant filed these proceedings on November 11th, 2021, seeking damages for unlawful arrest, unlawful imprisonment, assault, aggravated damages, exemplary or vindictory damages and special damages for loss of salary, medication, cost of letter and cost of statement to police disciplinary board.
- 4) The Claimant's claim and statement of claim set out a veritable cornucopia of reliefs. The burden of proving the right to those reliefs' rests squarely on the Claimant. The onus lay on the Claimant to identify and then marshal the evidence in support of his claim for these reliefs. The failure to do so to the requisite legal standard, that is to say, on a balance of probabilities would mean that the Claimant would have failed to prove its case.
- 5) The case for the Claimant can be split into two separate and distinct parts, the events at Fountain and the events at the Newcastle Police Station.
- 6) Purely for convenience, this Court will deal with the events at Newcastle Police Station (the assault aspect of the case) first and then turn to the events at Fountain.

Newcastle Police Station – the alleged assault

- 7) The Claimant's evidence on this issue can be summarized as follows. According to him the ventilation in the cells at the Newcastle Police Station was poor. He had difficulty breathing and called out for assistance but got no reply. The Claimant said that while using the toilet in his cell he accidentally released the toilet seat from his hands. This resulted in a loud bang. Shortly after this, Officer Jimmy (PC Glenville Nisbett) came to his cell and started to call out to him.
- 8) The Claimant and PC Nisbett are agreed that the Claimant did not respond when PC Nisbett was calling out to him. The Claimant then says that PC Nisbett entered his cell, armed with a baton and struck him on his 'tight' (presumably he meant thigh) with the baton. According to the Claimant PC Nisbett appeared visibly angry and then closed the door and left him in the cell. The Claimant says that later that evening, PC Nisbett apologized to him for hitting him and told him that if he (the Claimant) had answered him (Nisbett) when he had called him, he would not have hit him.
- 9) The Claimant says that after he was released from custody that night, he took pictures of his bruised and swollen leg around 8 pm on the night of the incident and went to the Alexander Hospital to seek medical attention. According to him he was prescribed medication in the sum of \$75.00 but did not keep receipts. Two photographs were tendered in evidence by the Claimant. Those photographs displayed a hirsute human appendage but there was no date or time stamp on the photographs.
- 10) The Claimant's case was supported by his fiancée's evidence. Ms. Persram's evidence was that she saw the Claimant holding his leg when he came out of the Newcastle Police Station that night and that she saw a 'nasty bruise' on the Claimant's thigh when they went to his

mother's house after he was released from the Newcastle Police Station. According to her, the Claimant complained of pain during the night, and she gave him Tylenol and Advil that night. They spent a sleepless night, and she forced him to seek medical attention at the Alexandria Hospital on the afternoon of the following day.

- 11) Mr. David Paul Davis was summoned as a witness by the Court. See Part 33 of the Civil Procedure Rules and rule 26.1 (w) which empowers a Court to make any other order for the purpose of managing the case and furthering the overriding objective. Mr. Davis's evidence on the incident at the Newcastle Police Station was that he and the Claimant were placed in next-door cells. His cell was stifling hot and that he heard when the Claimant said that he suffered from claustrophobia. According to him, while he was in his cell, he heard a clang and some yelling from the Claimant's cell. He knew from the yelling that it was the Claimant, and he (Davis) formed the view that the yelling was because someone was being hit.
- 12) PC Nisbett denied assaulting the Claimant. According to him, he was on duty on the day that the Claimant and Mr. Davis were placed in the cells at Newcastle Police Station. He accepted that there were no windows in the cell and that there was no air conditioning in the cells. The cell comprised of a large metal door with a small mesh window at the bottom.
- 13) PC Nisbett said that he opened the cell and saw the Claimant lying on his back on the floor of the cell. He spoke to the Claimant, but the Claimant did not respond to him. PC Nisbett then retrieved the keys to open the cell and entered the cell. He accepted that he was upset at the time that he entered the cell and accepted that he shouted at the Claimant so that the Claimant could move in front of the cell.
- 14) In answer to a question from the Court PC Nisbett indicated that when he said that he was upset at the Claimant that he had misunderstood the question being asked of him by counsel for the Claimant. By upset he meant that he was making noise at the Claimant. PC Nisbett told the Court that he did not feel any way seeing the Claimant lying there and asked him why he slammed the toilet seat. It was PC Nisbett's evidence that he walked past the Claimant and went into the cell. He was not armed with any baton, didn't hit the Claimant with any baton. He simply checked the toilet and face basin and left the cell and neither he nor the Claimant exchanged any words while he was in the cell.

Court's Findings:

- 15) The burden of proof is on the Claimant to establish on a balance of probabilities, that is to say, it is more probable than not that events transpired as alleged by the Claimant. The Claimant has failed to discharge this burden for the following reasons.
- 16) Firstly, as a matter of law, if a serious allegation is made more cogent evidence may be required to overcome the unlikelihood of what is alleged. See the learned authors of Phipson on Evidence 16th edition at paragraph 6-54 to this effect. Authority for this proposition is derived from the reasoning of Lord Nicholls in Re H (minors) [1996] A.C. 564 in the following terms:

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind the factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence the stronger should be the evidence before the court concludes that the allegation is established on a balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury.....Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability its occurrence will be established."

- 17) An allegation that a police officer gratuitously applied violence to an unarmed person in custody that posed no threat to him is an extremely serious allegation. In this Court's view, if such an allegation were proved disciplinary and criminal proceedings would be warranted irrespective of the nature of the harm caused. The onus thus lay on the Claimant to make good its case since it was aware or should be aware of the trite principles of law set out above. In those circumstances, the absence of any supporting medical evidence, particularly when the Claimant averred that he sought and received treatment at the Hospital is startling.
- 18) The Civil Procedure Rules have specific rules dealing with how to apply for and obtain evidence of this nature. The Claimant's lawyer appeared content to have written to the Hospital requesting the information and drew to this Court's attention the fact that he had done so. Quite why no application specifically asking the Hospital to provide the records pursuant to the Civil Procedure Rules remains a mystery.
- 19) Secondly, the failure to apply for any such medical evidence must be considered in the context of this case. No medication taken by the Claimant to ease the pain of his alleged injuries was tendered in evidence although the Claimant's fiancée said she had given him Advil and Tylenol. Simply saying that Tylenol and Advil were given without more is not helpful and could not discharge the Claimant's burden to prove its case that medical attention was required. This failure compounds and underscores the inadequacies of the Claimant's legal practitioner in marshalling the evidence in support of his client's case. The burden is not on the Claimant but on his lawyer to know what is required and take steps to obtain same.
- 20) Thirdly, the photographs of a hirsute appendage without more could not suffice to discharge the burden of proof to the standard summarized by Lord Nicholls above. Tendering a photograph in evidence without establishing the means by which the photograph was taken or any attempt to establish the metadata proving the date and time that the photographs were taken only serve to underscore the Claimant's shortcomings. These shortcomings cannot be placed at the feet of the Claimant since he supplied the photographs to his lawyer. It was the lawyer's job to review the photograph, establish its authenticity and tender it in evidence.

- 21) There was no bar to the entry of the photograph into evidence since the Claimant was well placed to say that he recognized the appendage as his own and the photograph being of his leg, but this could not suffice to prove the case for assault. That evidence was inadequate in a case where a court was being asked to find that a police officer had not only gratuitously applied violence but on reflection apologized hours later for having done so.
- 22) Lord Nicholls makes it clear, deliberate physical injury is usually less likely than accidental. In these circumstances, deliberate physical violence followed by a contrite apology is improbable on its face. The burden lay on the Claimant and his lawyer to discharge this considerable burden.
- 23) The fact that the Claimant's fiancée failed to mention that the Claimant was off from work for 3 days as he claimed only serves to further undermine the improbability of the case for the Claimant. It is passing strange that she would recall the medication administered but not say, whether in her witness statement or viva voce evidence that the injury was so serious that the Claimant was unable to work for 3 days. In this regard there are two possibilities, either she told this to the lawyer, and he failed to include it in the witness statement or the Claimant's evidence on this issue was a concoction. Neither conclusion is palatable nor of any assistance to the Claimant's case.
- 24) The evidence of Mr. Davis that he heard a bang and yelling and that he formed the view that someone was hit also suffers from the following challenges. Firstly, the Claimant did not call Mr. Davis as his witness in order to support his case. Why he did not do so or seek a witness statement from the man who appeared to have been his employer and fellow inmate in the cells at Newcastle Police Station is odd to say the least. Mr. Davis's evidence as to what he saw and heard was adduced for the first time at trial and not foreshadowed in any witness statement.
- 25) Additionally, Mr. Davis appeared to believe that he was authorized by the Claimant to remove parts from CJ's vehicle. This Court has grave reservations about the veracity of Mr. Davis's evidence on the events at Fountain and this challenge with his credibility affects this Court's assessment of his credibility on the events at the Newcastle Police Station.
- 26) This is not to say that there are not improbabilities in the case for the Defendant. PC Nisbett's evidence that he simply entered the cell, bypassing the Claimant on the ground and then leaving the cell is incredible. PC Nisbett's attempt to clarify what he meant when he said he was upset is highly improbable. Any reasonable person in his position would have been at best mildly annoyed to enter a cell and see the Claimant prone and uncommunicative but not apparently in any distress. The suggestion that he was not upset is difficult to accept. All the same, simply being upset does not translate into proof that violence was applied to the Claimant.
- 27) The suggestion that the Claimant concocted his case of an assault is also implausible. Concoction would mean that the Claimant and his fiancée had put their heads together and actively sought to deceive the Court by manufacturing photographs and lying about seeing the Claimant limping and having injuries all for the purpose of maintaining a suit against the Defendant for the past 2 years. This Court had the benefit of seeing and hearing the witnesses

on all sides and is satisfied that no witness was exposed as an inveterate teller of untruths. Ultimately, this Court's task is to determine whether it is more probable that events transpired as alleged by the Claimant.

- 28) In this court's view, the probabilities are equal. This Court can do no better than to cite the learned authors of Phipson on Evidence at paragraph 6-07 in the following terms:

"Where there are two improbable theories, the elimination of one does not automatically lead to the acceptance of the other equally improbable theory. The judge is not always bound to make a finding one way or the other. He has open to him the third alternative saying that the party on whom the burden of proof lies in relation to any fact has failed to discharge that burden"

- 29) This Court is fortified in its findings by the reasoning of Lord Brandon in Rhesa Shipping Co S.A v Edmunds¹ (The Popi M) [1985] 1 W.L.R. 948 that:

"No judge likes to decide cases on the burden of proof if he can legitimately avoid having to do so. There are cases however in which owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just course to take"

- 30) For all these reasons, this court is satisfied that the Claimant has not proved his case that he was assaulted by PC Nisbett as alleged. The Claimant's case for damages for assault, aggravated damages and exemplary and/or vindictory damages fails.

The events at Fountain – the claim for false imprisonment & unlawful arrest

- 31) Everyone agrees that on July 14th, 2021, CJ was the owner of a BMW X3 vehicle. That vehicle was parked on the side of the road in Fountain, and everyone accepts that Mr. David Davis was seen near the said vehicle. Mr. Davis says that he did not remove any parts from the vehicle, CJ and the defence witnesses (Sgt Payne and Cpl Isaac) say otherwise but there is no photographic evidence from either side to support the state of the vehicle or its parts.
- 32) Everyone agrees that the Claimant and his fiancée came to Fountain later that afternoon. There is a dispute as to whether the Claimant and his fiancée arrived before the Police or whether they arrived after the Police, but everyone agrees that CJ, the Police, Mr. Davis, the Claimant and his fiancée were all at Fountain on that afternoon.
- 33) The parties do not agree on the order in which they travelled from Fountain to the Newcastle Police Station and this Court is satisfied that the Claimant and Mr. Davis were not free to leave and were thus under arrest. The Defendant sought to argue that the Claimant and Mr. Davis were free to leave but this is at odds with the evidence that the Claimant and Mr. Davis were placed into the cells at Newcastle Police Station when they got there.

¹ See also the cases of *Morris v London Iron and Steel* [1972] 2 All E.R. 496; *Baker v Market Harborough* [1953] 1 W.L.R. 1472; *Bray v Palmer* [1953] 1 W.L.R. 1455; *Plater v Sontrach* [2004] EWHC 146; *Miller v Minister of Pensions* [1947] 2 All E.R. 372; *Newns v Lark* (1571) 2 Plowd 408; *Cooper v Slade* (1858) 6 HL Cas 746; *Lancaster v Blackwell Colliery* (1919) 89 L.J.K.B. 609; *Bonnington v Castings Ltd v Wardlaw* [1956] AC 613; *Dingwall v Wharton Shipping* [1961] 2 Lloyd's Reports 213

- 34) CJ's evidence is that the Claimant was handcuffed at Fountain. The Defendant's witnesses say that the Claimant was never handcuffed and drove his own vehicle to Newcastle Police Station. Why would CJ lie or be mistaken about this? It is telling that CJ, the Claimant and his fiancée are agreed on this handcuff issue. In this court's view CJ has nothing to gain from his evidence as to the use of handcuffs on the Claimant.
- 35) The Defendant's case on this issue is clearly at odds with CJ's evidence. This small detail as to the wearing of handcuffs supports the Claimant's case that he was in fact detained and taken to Newcastle as opposed to driving there of his own volition since why would the police handcuff a man only to release him to drive to the police station? Further support for this detail is the uncontroverted evidence that the Claimant's fiancée was the driver of the Claimant's vehicle to the Newcastle Police Station.
- 36) Everyone accepts that the Claimant and Mr. Davis were placed in the cells at Newcastle Police Station when they arrived there. The Defendant accepts that they are the ones who bear the burden of justifying why the Claimant was detained in the cells at the Newcastle Police Station for 5 hours and 50 minutes. According to the Claimant, there was no reason to suspect that he had committed any offence particularly since it was Mr. Davis and not the Claimant who had been caught examining CJ's vehicle. At best, it appeared that there was some misunderstanding as to whether Mr. Davis was authorized and by whom to remove parts from CJ's vehicle. Critically, Mr. Davis did not tell the Police that the Claimant had sent him to take parts off CJ's vehicle.
- 37) This Court had considerable difficulty determining who was speaking the truth about the vehicle and who was authorized to do what so that the Defendant's servants and agents cannot be blamed for taking the Claimant and Mr. Davis to the Newcastle Police Station to determine whether a crime had been committed and if so by whom?
- 38) No attempt was made to secure the parts from CJ's vehicle or take photographs of the state of the vehicle. Without photographs or vehicle parts how would the Police have gone about properly investigating this matter? Police Constable Romney accepted that tools and parts would have been essential for an investigation. PC Romney accepts that no statement was taken from the Claimant or Mr. Davis at Newcastle Police Station although he says that he spoke with them both. No attempt was made to produce any notes of what PC Romney took of his conversations with the Claimant or Mr. Davis.
- 39) How then does the Defendant justify the Claimant's detention in the cells at Newcastle Police Station for just short of 6 hours when by their own evidence no investigation appears to have been taking place?
- 40) The Claimant contends that there was no information available to the Police to justify his arrest. Moreover, the Claimant's detention ended without charges against either Mr. Davis or the Claimant. The Claimant's case is that one Randy Jeffers (another person from whom no attempt was made to secure a witness statement) managed to negotiate the release of the Claimant on financial terms. According to Mr. Davis, CJ sought \$25,000 and he offered

\$12,000 and then \$3,000. Ultimately a check for \$12,000 was written by Mr. Jeffers and the Claimant and Mr. Davis were released thereafter.

- 41) In this Court's view, it defies common sense that the Police would knowingly and willingly keep the Claimant detained while the parties (Jeffers, Davis and CJ) sought to negotiate a resolution. Quite why the Police allowed their power of detention and arrest to be leveraged in this way is both disturbing and unsurprising at the same time. CJ's unchallenged evidence that "the policeman told him that if he (CJ) is going to release the white man (Davis) then he has to release Chris (the Claimant) too" speaks volumes. The Claimant's detention in these circumstances is at odds with any legitimate purpose and counsel for the Defendant was at pains to point out any legitimate legal purpose that was served by the Claimant's detention.
- 42) Even if it was arguable that the Police were entitled to detain the Claimant at Fountain to determine whether he was involved in the stealing of parts from CJ's vehicle his continued detention while CJ, Mr. Davis and Mr. Jeffers sought to broker a resolution was unjustifiable.
- 43) In this court's view, the criminal power to arrest and detain is exercisable where the Police detain a suspect for the purpose of safeguarding the public and/or making further inquiries in an investigation. There can be no complaint with detention in those circumstances and the only complaint can be with the length of the detention and whether it was unnecessarily lengthy.
- 44) There was no evidence that any criminal proceedings were contemplated at any stage of the Claimant's detention. In order to justify the Claimant's arrest, the State must have been able to demonstrate that Mr. Davis and the Claimant were acting together. After all, according to CJ and the Police, Mr. Davis was caught in flagrante delicto in relation to the X3 vehicle, but aside from the Claimant's presence at Fountain, ostensibly at the behest of Mr. Davis, there was no evidence or basis upon which the Police could reasonably suspect that the Claimant and Mr. Davis were acting together in allegedly removing parts from CJ's vehicle. It is trite law that mere presence could not suffice for criminal liability and the Claimant's presence at Fountain after Mr. Davis had been caught by CJ could not suffice to suggest that the Claimant had done something which warranted his detention.
- 45) This point does not have to be decided in these proceedings, but it would have been extremely difficult for Mr. Davis to have filed proceedings for unlawful arrest and false imprisonment on these facts. For what it is worth he did not do so but the factual distinction between the Claimant and Mr. Davis appears to have eluded the Defendant. The basis for suspecting that an offence had been committed was clearly established against Mr. Davis. What was the basis for any reasonable suspicion that the Claimant had committed an offence?
- 46) Reasonable suspicion is both subjective and objective and the reasoning of Mr. Justice Ramdhani in the case of Everette Davis v The Attorney General of St Christopher and Nevis is instructive:

"The law gives the police the right to detain and or arrest anyone upon reasonable and probable cause that that person has or is about to commit an offence. The test as to whether there is reasonable and probable cause is both subjective and objective. The perceived facts must be such as to allow the reasonable third person and actually cause

the officer in question to suspect that the person has committed or is about to commit a crime. It does not matter if the information available to the police leads equally or more to a view that the person may be innocent of the offence, once it leads reasonably to a conclusion that he may have committed or is about to commit the offence that is sufficient to ground the arrest. The reasonable police officer is assumed to know the law and possessed of the information in the possession of the arresting officer and would have believed that the claimant was guilty of the offence for which he was arrested. The term 'reasonable suspicion' relates to the existence of the fact at the time. It does not relate to a perception of the law."

- 47) When the foregoing test is applied to the facts of this matter, it is clear that there was no basis for any reasonable suspicion that the Claimant had committed an offence. Firstly, the Police gave no subjective evidence of any facts which led them to suspect that the Claimant had committed an offence. Secondly, there is no objective basis upon which this court could find that the Police could have reasonably suspected the Claimant of having committed an offence.
- 48) The Claimant's claim for unlawful arrest is dismissed while his claim for false imprisonment for 5 hours and 50 minutes is allowed.

Damages for False Imprisonment

- 49) The Claimant is entitled to damages for his false imprisonment for what amounts to just short of 6 hours. The issue of damages for false imprisonment has engaged the attention of the Eastern Caribbean Supreme Court in several decisions both in the Federation of St Christopher and Nevis and the ECSC at large.
- 50) It is common ground that the starting point is that any award of damages for false imprisonment must consider the following principles as outlined by the late Chief Justice de la Bastide in Millette v McNicolls that:

"There is no doubt, that there must be an element of initial shock when a person is first arrested and imprisoned. This is an element which must be taken into account and compensated for in any assessment of damages for wrongful arrest and false imprisonment, regardless of whether the imprisonment is long or short. The extent of the compensation for this will depend on the particular facts of the case. Certainly, the way in which the arrest and initial imprisonment are effected, the publicity which attends to them, the affront to the dignity of the person, all of these factors determine the size of the element that is referable to that. It has nothing to do with the length of the subsequent imprisonment."

- 51) In Matthew McMillan v Alonzo Carty and the Attorney General of Saint Kitts and Nevis, Mr. Justice Ventose awarded the sum of EC\$75,000.00 to the claimant for false imprisonment and wrongful arrest. In that case, the claimant was detained at the airport, taken to a police station, and kept in custody for about 9 hours. Awards of EC\$20,000.00 for 6 hours and EC\$25,000.00 for 9 hours of false imprisonment were made in 2008 to the claimants in Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica. \$10,000.00 was awarded in Malcolm Payne v Chief Magistrate for 3 hours false imprisonment in deplorable conditions at a police station in Dominica. Finally, the Court of Appeal in Wakeem

Guishard v The Attorney General of the British Virgin Islands upheld the award of US\$20,000.00 as compensation to the appellant for the initial or 'shock period'.

- 52) This court has considered the foregoing cases in conjunction with the following principles in arriving at the sum awarded to the Claimant as damages for his false imprisonment. Firstly, awards from the British Virgin Islands should not simply be converted to EC\$ without more since to do so would fail to acknowledge the prevailing social and economic situation in countries which may not be comparable. See per Olivetti J at paragraph 31 in Lester Anderson v Penngor Ltd.
- 53) Secondly, the leading UK case on awards for damages for false imprisonment is Thompson and Hsu v The Commissioner of the Metropolis [1998] QB 489. This appellate and thus highly persuasive decision of the English and Welsh Court of Appeal held that the sum of £500 was appropriate for the first hour of detention with the sums to be awarded after the first hour on progressively reducing scale such that for a 24-hour period an award of £3,000 would be appropriate. This authority was applied by courts in the Eastern Caribbean Supreme Court from 2000 onwards but for reasons that are unclear this decision has fallen into desuetude. This court has been unable to find any ECSC cases that distinguish the principles set out in Thompson and Hsu or any cases that say that Thompson and Hsu is no longer good law.
- 54) Thirdly, one must make allowance for the fact that Thompson and Hsu was decided in 1998, 25 years ago. There is no need for guesswork as to the impact of inflation and an online inflation calculator which considers inflation and the consumer price indices (the cost of goods in the past and now) confirms that £500 in 1998 is now the equivalent of £911.29 in 2023. This Court does not propose to convert Thompson and Hsu to today's dollars and use that as a baseline for determining the award payable to the Claimant. The socio-economic differences between the UK and the Eastern Caribbean and the reasons why it would be inappropriate to apply an updated Thompson and Hsu formula do not require analysis in this judgment.
- 55) All the same and with greatest of deference to Justice Ventose, an award of EC\$75,000 for 9 hours of unlawful detention does not appear to fit the justice of the present case. Thompson and Hsu may not be on all fours on the quantum of damages but there is no disputing the principle established in that case that 'the sum should be on reducing scale so as to keep the damages proportionate with those payable in personal injury cases because the plaintiff is entitled to have a higher rate of compensation for the shock of being arrested.' Making allowance for inflation and the difference between the United Kingdom and the Eastern Caribbean would mean that an award of \$75,000 for 9 hours works out to \$8,333.00 per hour. The awards in the Warrington, Peters, Mills and Payne cases amount to approximately \$3,000 per hour and suggests that a sum for the initial shock of arrest and an hourly rate in the vicinity of the latter cases is both reasonable and appropriate.
- 56) For these reasons, this Court is of the view that the initial shock of detention is best captured by an award of \$6,000.00 for the initial shock of detention with a sliding scale of \$3,000 per hour for each hour thereafter up to 24 hours consistent with the Thompson and Hsu principle. In this case, this means that the Claimant is entitled to \$6,000 for the first hour plus \$4,000 per hour for the 5 hours and 50 minutes (rounded up to 6 hours) that he was detained. The Claimant is thus awarded the sum of \$26,000.00 as damages for his false imprisonment for 6

hours. For the avoidance of any doubt this Court does not presume to establish a benchmark for compensation for unlawful arrest such that all arrests should attract compensation identical to this case. Awards of damages are in the discretion of the Court and must be tailored to meet the circumstances of each case.

- 57) It is noteworthy that there was no evidence from the Claimant that members of the public were present when he was placed in his cell at the Newcastle Police Station. Neither at trial nor in his witness statements did the Claimant lead any evidence of any ridicule or damage to his reputation although this was an averment at paragraphs 17 and 18 of his statement of claim.
- 58) The Claimant is entitled to special damages for the costs of service of his demand letter in the sum of \$350.00. No copy of the Claimant's statement to the Police Disciplinary Board was tendered in evidence and in any event, there was no evidence as to when this statement was given or how that cost was incurred.
- 59) The other heads of special damages claimed by the Claimant must fall away since this Court dismissed the Claimant's claim for damages for assault and exemplary and aggravated damages.
- 60) The total award is thus:

Damages for false imprisonment -	\$26,000.00
Special damages	- <u>\$350.00</u>
Total	- <u>\$26,350.00</u>

Costs

- 61) It is trite law that the costs that would be payable by the State after a trial are greater than the costs payable at any stage before trial. It is also clear that while the Claimant has enjoyed success on one aspect of their claim, they have failed to prove another aspect of their claim. The appropriate order is therefore that the Claimant is entitled to their prescribed costs on the sums awarded above in view of their success on their claim for damages for false imprisonment. The Defendant is entitled to their costs, such costs to be assessed if not agreed within 14 days of this order in view of their success in resisting the Claimant's claim for damages for unlawful arrest, assault, aggravated and exemplary damages.

Postscript

- 62) This Court wishes to put on record the following concerns. It is trite that counsel in all courts have a legal obligation to assist the Court. Assisting the Court must involve the marshalling of evidence and the taking of points in support of their varying positions. The failure to do so makes the Court's task of dispensing justice invariably harder if not impossible, especially in case where the evidence is starkly conflicting.
- 63) In this case their failures were as follows. Neither side appears to have addressed their mind to the witnesses that could and should have been called in support of their respective cases.

Neither side applied for witness summonses but without the summons issued to CJ and Mr. Davis by the Court and the evidence they supplied, the case for either side was indecipherable. Put another way, the absence of their evidence would have left gaping holes in the entire case which would have made it impossible for this Court to understand, much less determine the issues in this case. So that for example both Mr. Davis and CJ's evidence was critical in order to determine what happened at Fountain before the Police came. Therefore, it was inconceivable that neither side sought to have Mr. Davis or CJ called since their evidence when taken at trial was of vital assistance to both sides.

- 64)** The Claimant did not seek to issue a summons for the doctor who treated his client and no medical report from the doctor was put in evidence. In a case where the Defendant was disputing the fact of any assault, much less injuries the Claimant's failure to marshal this evidence was puzzling.
- 65)** Finally, in a case in which the evidence was so diametrically opposed it was mystifying to this Court that counsel for both the Defendant and the Claimant spurned this Court's invitation to orally expound upon their written closing submissions. Their stance was even more surprising since the penultimate hearing date in this matter was fixed for this specific purpose of allowing them an opportunity to persuade the court of the merits of their respective cases. It is hoped that in future counsel will leap at such opportunities to make good their case and hone their forensic argumentative skills thus ensuring that they fully discharge their responsibilities to their respective clients.

**Patrick Thompson Jr
Resident High Court Judge**

BY THE COURT

REGISTRAR